

No. 77-1493

**In the
Supreme Court of the United States**

OCTOBER TERM, 1977

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

GLADSTONE, REALTORS,[®] et al.,

Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,

Respondents.

ROBERT A. HINTZE, REALTORS,[®] et al.,

Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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Petitioners Gladstone, Realtors,[®] James D. Doebling, Robert J. Casey, Ted Wolnik, Beverly Ricchuto, William Jakes, Carol Hosnedl, Robert A. Hintze, Realtors,[®] R. J. Tiliman, Stephen F. Eggerding, and Robert A. Hintze respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in these proceedings on January 25, 1978.

Opinions Below

The opinion of the Court of Appeals, which is reported at 569 F.2d 1013 (7th Cir. 1978), appears in the Appendix hereto. *Appendix 9-21*. The opinions rendered by the United States District Court for the Northern District of Illinois, which are unreported, are also contained in the Appendix hereto. *Appendix 1-8*.

Jurisdiction

The judgment of the Court of Appeals for the Seventh Circuit was entered on January 25, 1978. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to Section 1254(1) of Title 28, United States Code.

Question Presented

Whether natural persons and municipalities, who are not direct victims of discrimination in the sale of housing, have any right under Article III of the United States Constitution and Sections 1982, 3604 and 3612 of Title 42, United States Code, to bring suit against real estate brokers whom they allege to have engaged in racial steering, on the theory that racial steering interferes with such persons' generalized interest in living in an integrated society.

Constitutional And Statutory Provisions Involved

United States Constitution, Article III, Section 2, Clause 1:

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the

United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

United States Code, Title 42:

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

§ 3604. Discrimination in sale or rental of housing

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

§ 3610. Enforcement

Person aggrieved; complaint; copy; investigation; informal proceedings; violations of secrecy; penalties

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall

make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

Complaint; limitations; answer; amendments; verification

(b) A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his

judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with the subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

Burden of proof

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

Trial of action; termination of voluntary compliance efforts

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

§ 3612. Enforcement by private persons

Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders

(a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however*, That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however*, That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Injunctive relief and damages; limitation; court costs; attorney fees

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

Statement Of The Case

On October 25, 1975, six individual plaintiffs, the Village of Bellwood, Illinois, and the Leadership Council for Metropolitan Open Communities filed an action in the United States District Court for the Northern District of Illinois, alleging that Gladstone, Realtors,[®] and six of its salespersons had engaged in the practice of racial steering of prospective home purchasers in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1982, and the Fair Housing Act of 1968, 42 U.S.C. § 3604. Federal jurisdiction was alleged under 28 U.S.C. §§ 1343(4) and 2201, as well as 42 U.S.C. § 3612. On the same date, the same plaintiffs filed a substantially identical complaint against defendants

Robert A. Hintze, Realtors,[®] and three of its employees. Gladstone, Realtors,[®] and Robert A. Hintze, Realtors,[®] are both real estate brokerage firms doing business in Bellwood, Illinois.

The individual plaintiffs in both actions were four white residents of Bellwood, a black resident of Bellwood, and a black resident of another municipality. Initially, they alleged two distinct injuries: that they had "been denied their right to select housing without regard to race and [that they had] been deprived of the social and professional benefits of living in an integrated society." *Gladstone Complaint* ¶ 12; *Hintze Complaint* ¶ 13. In response to defendants' requests for admissions, however, the individual plaintiffs admitted that they had acted only as investigators or testers; none of them had intended to purchase a home in Bellwood during the relevant time period. *Gladstone Plaintiffs' Admissions* A-1; *Hintze Plaintiffs' Admissions* A-1. Moreover, in answers to interrogatories, plaintiffs were unable to identify any bona fide homeseeker whom they believed to have "used or sought to use [defendants'] services . . . and whose choice was influenced on the basis of race." *Gladstone Plaintiffs' Answers To Interrogatories* 12(d); *Hintze Plaintiffs' Answers To Interrogatories* 12(d).

Consequently, the individual plaintiffs' claim of injury rests solely on the generalized allegation that they were denied the benefits of living in an integrated society. The Village of Bellwood also based its claim for relief on the generalized allegation that "the housing market in said village [was] wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village." *Gladstone Complaint* ¶ 11; *Hintze Complaint* ¶ 12. Finally, the Leadership Council for Metropolitan

Open Communities, a voluntary association dedicated to open housing, alleged that "[s]uch acts and practices . . . hamper and interfere with [its] work and purpose . . . and cost [it] money to provide an audit and other efforts to eliminate such unlawful acts." *Gladstone Complaint* ¶ 10; *Hintze Complaint* ¶ 11.

In both cases, plaintiffs sought damages, a declaratory judgment, and injunctive relief. First, plaintiffs sought a declaratory judgment that the individual plaintiffs could not be denied the right to inspect, negotiate for purchase, and purchase homes without regard to race. Second, they asked that defendants be permanently enjoined from racial steering, from attempting to dissuade homeseekers from purchasing homes in particular areas because of racial characteristics, and from encouraging homeseekers to purchase homes in particular areas because of racial characteristics. Third, plaintiffs asked that they be awarded compensatory and punitive damages amounting to several hundred thousand dollars, as well as costs and attorneys' fees.

The *Gladstone* case was assigned to Hon. Bernard M. Decker, United States District Judge for the Northern District of Illinois; the *Hintze* case was assigned to Hon. Joseph Sam Perry, United States Senior District Judge for the Northern District of Illinois. In July 1976, on the basis of plaintiffs' answers to interrogatories and formal admissions, defendants moved for summary judgment in both cases; they argued that plaintiffs had not established an actionable claim or standing to sue under Sections 1982, 3604, and 3612 of Title 42, and that they had failed to demonstrate the existence of a case or controversy under Article III of the United States Constitution.

On September 23, 1976, Judge Decker granted defendants' motion for summary judgment. The district court found that the individual plaintiffs were merely investigators or testers, and that none of them had made any bona fide effort to purchase a home in Bellwood during the relevant period. *Appendix 2*. Consequently, the individual plaintiffs could not have been denied the right to select housing without regard to race. At most, the individual plaintiffs could have suffered only the indirect or generalized injury of being denied the benefits of living in an integrated society.

Relying on the Ninth Circuit's decision in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), Judge Decker held that the individual plaintiffs lacked standing to sue because "a cause of action under § 3612 exists only for 'the direct victims' of a practice proscribed by § 3604." *Appendix 4*. The district court also held that plaintiffs' allegations of indirect injury failed to state a claim under Section 1982. *Appendix 7*. Finally, the district court held that neither the Village of Bellwood nor the Leadership Council had suffered a cognizable injury. *Appendix 2, 5*.

On September 29, 1976, Judge Perry granted defendants' motion for summary judgment in *Hintze*. Judge Perry adopted Judge Decker's opinion in *Gladstone*, which he found dispositive, because "the complaint in the *aforecited* case is almost a verbatim duplicate of the complaint in the instant case." *Appendix 8*. A timely notice of appeal was filed in both cases, which were consolidated for purposes of appeal on January 12, 1977.

On January 25, 1978, the Court of Appeals for the Seventh Circuit reversed in part the decisions of the district court. The Court of Appeals held that the Leader-

ship Council's "interest in open housing matters and its asserted commitment to effectuating that interest, albeit commendable, do not substitute for the concrete injury constitutionally required to invoke the jurisdiction of the federal courts." *Appendix 15*. The court also held, however, that the individual plaintiffs and the Village of Bellwood had stated a claim and had standing to sue under Sections 3604 and 3612. *Appendix 15-16*.

The Court of Appeals held that the individual plaintiffs, as residents of the Bellwood community, had standing to complain that they had lost the benefits of living in an integrated society. The Seventh Circuit relied on *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), in which this Court held that residents of an apartment complex had standing under Section 3610, another section of the Fair Housing Act, to complain that their landlord's rental practices had deprived them of the social and professional benefits of living in an integrated community. While noting that *Trafficante* was not technically controlling in the present case, the Court of Appeals held that "its thrust and rationale plainly suggest that the individual plaintiffs and the Village of Bellwood have standing." *Appendix 18*.

The Seventh Circuit explicitly rejected the *TOPIC* court's conclusion that Section 3612 should be construed more narrowly than Section 3610, although it acknowledged that that view was "not without some plausibility." *Appendix 17*. Recognizing that its decision created a conflict among the circuits, with respect to an important question of federal statutory construction, the hearing panel took the unusual step of circulating its opinion among all judges of the court in regular active service, prior to the announcement of its decision. *Appendix 18 n.7*.

With respect to the Village of Bellwood, the Court of Appeals found it unnecessary to determine "whether or not [the Village] would have standing if the sole injury alleged was the deprivation to its citizens of the benefits of integrated living [because] . . . it is apparent that specific concrete injury with a substantial nexus to the Village's status as a unit of government could be proved under these complaints." *Appendix 14*.

Reasons For Granting The Writ

I.

The Decision Of The Court Of Appeals In This Case Directly Conflicts With The Ninth Circuit's Decision In *TOPIC v. Circle Realty* On An Important Question Of Federal Statutory Construction.

Although the individual plaintiffs had no intention of purchasing a home, the Seventh Circuit held that they had stated a claim under Section 3604, and that they had standing to sue under Section 3612, because they alleged that defendants had denied them the benefits of living in an integrated society. *Appendix 19*. The Court of Appeals also held that the Village of Bellwood had stated a claim and had standing to sue. *Appendix 14*. The Seventh Circuit's decision directly conflicts with the Ninth Circuit's decision in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), in which the court held that a complaint, substantially identical to the complaint herein, failed to state a claim upon which relief could be granted. Indeed, the only material difference between the two complaints is that the *TOPIC* plaintiffs claimed to have lost the benefits of living in an integrated *community*, while the plaintiffs herein claim that defendants deprived them of the benefits of living in an integrated *society*. If anything, the injury alleged in the present case is more generalized, and less susceptible to adjudication, than that which was alleged in *TOPIC*.

In *TOPIC*, an association dedicated to open housing, and three of its members, alleged that certain real estate brokers in Torrance and Carson, California, had engaged

in the racial steering of homeseekers in violation of Section 3604. Plaintiffs further alleged that they had standing to sue under Section 3612. The individual plaintiffs were not actual homeseekers, and they had suffered no direct injury due to the alleged racial steering. Instead, they alleged that they had been injured indirectly by being "deprived of the important social and professional benefits of living in an integrated community." *Id.*, 1274. The *TOPIC* plaintiffs also based their claim of injury on the allegation that they had "suffered and will continue to suffer embarrassment and economic damage in their social and professional activities from being stigmatized as residents of either white or black ghettos." *Id.*

The *TOPIC* plaintiffs sought to assure the justiciability of their claim by describing their alleged injury in the same words used by the plaintiffs in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). In *Trafficante*, this Court held that certain tenants of an apartment complex were "persons aggrieved" within the meaning of Section 3610, and had standing to challenge their landlord's discriminatory rental practices because those practices deprived them of the benefits of living in an integrated community, even though they were not direct victims of discrimination. The *TOPIC* court held, however, that this Court's holding in *Trafficante* was inapposite because it applied only to cases brought under Section 3610, which created a remedial scheme entirely dissimilar in structure and purpose from that established by Section 3612.¹ The

¹ The *TOPIC* court also noted that the plaintiffs therein might not have standing in a constitutional sense because, unlike the plaintiffs in *Trafficante*, they were not residents of a single apartment complex, and the relationship between defendants' conduct and the claimed injury "may be so attenuated as to negate the existence of any injury in fact." *TOPIC*, *supra*, 1275. See also pp. 25-29, *infra*.

court discussed the significance of the procedural differences between the two sections:

The Supreme Court has recently characterized its earlier interpretation of section 3610 in *Trafficante* as giving residents of housing facilities "an actionable right to be free from the adverse consequences to them of racially discriminatory practices directed at and immediately harmful to others." *Warth v. Seldin*, *supra*, 422 U.S. at 513, 95 S.Ct. at 2212, 45 L.Ed.2d at 363. The narrower language of section 3612, on the other hand, precludes suit by such individuals. By permitting suit only to enforce certain enumerated rights, that section provides access to the courts only to those who are granted rights by the Act, namely, those who are the direct objects of the practices it makes unlawful.

Section 3604 grants rights not to be discriminated against in the sale or rental of housing. . . . Although the complaint alleges that racial steering is a practice which violates section 3604, we conclude that only the direct victims of such a practice have a cause of action under section 3612.

TOPIC, *supra*, 1275.

The *TOPIC* court emphasized that its construction of Section 3612, permitting actions to be brought only by direct victims of discrimination, was essential to any rational construction of the Fair Housing Act as a whole.²

² The *TOPIC* court's construction also conserves scarce judicial resources by limiting immediate judicial relief to direct victims of discrimination, thereby increasing the likelihood that timely judicial relief will be afforded to those persons. If an individual is denied the opportunity to purchase or lease a particular dwelling because of discrimination, he will need extraordinary relief to guarantee that the dwelling he seeks is not sold or leased before his claim can be heard. By limiting immediate access to the courts to direct victims of discrimination, the *TOPIC* court's construction increases the likelihood that that relief will be available. The *TOPIC* court's construction thus furthers judicial economy as well as an important purpose of the Fair Housing Act.

Section 3610, which permits actions to be brought by some indirect victims of discrimination, as well as by persons directly affected by discrimination, requires compliance with important preliminary procedures before an action may be brought in federal court.³ Section 3612, on the other hand, creates immediate and unconditional jurisdiction in the federal courts. "To accept [the] argument that sections 3610 and 3612 extend to identical classes of plaintiffs would destroy this statutory pattern, for the procedural prerequisites of section 3610 could then be avoided in every case." *Id.*, 1276. Consequently, the *TOPIC* court held that the immediate federal judicial remedy established by Section 3612 is available only to persons who are direct victims of discrimination. Persons who claim to have been harmed indirectly, in the generalized sense of being denied the benefits of an integrated society, are remitted to their Section 3610 remedies.⁴

³ Putative plaintiffs must first exhaust federal administrative remedies. 42 U.S.C. § 3610(a). Thereafter, they must avail themselves of "substantially equivalent" state remedies. *Id.*, § 3610(c). As this Court noted in *Hunter v. Erickson*, 393 U.S. 385, 388 (1969), the Fair Housing Act "specifically preserves and defers to local fair housing laws." If state judicial remedies are available, they will preempt the federal judicial remedy. 42 U.S.C. § 3610(d). See pp. 19-21, *infra*. The Illinois legislature has delegated broad powers to its political subdivisions to prohibit discrimination in housing. See Ill.Rev. Stats. ch. 24, § 11-11.1-1 (1977); *id.*, ch. 111, § 5742 (1977). Inasmuch as the sovereign has delegated this authority to municipalities, it is difficult to see why municipalities should need standing to sue under Section 3612 of the Fair Housing Act to promote their governmental objectives. Congress recognized this fact in enacting Section 3612 to provide for "Enforcement by private persons."

⁴ The *TOPIC* court also held that plaintiffs had no cause of action under Section 1982. *TOPIC*, *supra*, 1274 n.4. The Ninth Circuit's analysis is well supported by this Court's decision in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968), in which the Court said, "Whatever else it may be, 42 U.S.C. § 1982 is not a comprehensive open housing law." The Seventh Circuit appears not to have reached this question, at least explicitly, in the present case. *Appendix 15 n.4.*

The decision herein directly conflicts with the Ninth Circuit's decision in *TOPIC*. Apart from their holdings, the cases are indistinguishable in all material respects. In both cases, persons who were not direct victims of discrimination brought suit, under Section 3612, claiming that they had been denied the right to live in an integrated community or in an integrated society. The Seventh Circuit recognized that the *TOPIC* decision was "not without some plausibility," but concluded that that case was wrongly decided. *Appendix 17, 18*. The Seventh Circuit unequivocally rejected the Ninth Circuit's construction of Section 3612. *Appendix 18 n.7*.

The courts of appeals are now divided on the proper construction to be given an important Act of Congress.⁵ The positions taken by the courts are irreconcilable and the granting of a writ of certiorari is necessary to resolve this conflict.

II.

The Decision Of The Court Of Appeals In This Case Is Inconsistent With The Language, Remedial Structure, And Policy Of The Fair Housing Act Of 1968.

The Court of Appeals acknowledged that its decision, with respect to the claims of the individual plaintiffs and the Village of Bellwood, was irreconcilable with the Ninth

⁵ Several district courts have also considered this question. See *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F.Supp. 486 (E.D.N.Y. 1977); *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F.Supp. 1071 (D.N.J. 1976); *Village of Park Forest v. Fairfax Realty*, P.H.E.O.H. Rep. ¶ 13,699 (N.D. Ill. 1975) and ¶ 13,784 (N.D. Ill. 1976); *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975).

Circuit's decision in *TOPIC*. The Court of Appeals based its decision, however, on the assumption that persons complaining of a generalized injury to their interest in living in an integrated society must have an actionable claim under Section 3612 because tenants of an apartment complex have standing under Section 3610 to complain that they have lost the benefits of living in an integrated community.⁶ The Fair Housing Act demonstrates not only that that assumption is unwarranted, but that it is in fact incompatible with the language, remedial structure, and legislative policy of the Act.

The Seventh Circuit's expansive construction of Section 3612 ignores a cardinal rule of statutory construction: that the sections of a statute must be construed "in connection with every other . . . section so as to produce a harmonious whole." 2A C. Sands, *Sutherland Statutory Construction* § 46.05, p. 56 (4th ed. 1973). Indeed, the Seventh Circuit recognized that its construction of Section 3612 "may to some degree seem to offend a judicial penchant for consistency [in that it implies] that Congress has, in the same act, established an administrative remedy and authorized plaintiffs, at their discretion, to bypass it." *Appendix 20*.

Section 3610 establishes an elaborate procedure for protecting the rights of a "person aggrieved," defined in that section as "[a]ny person who claims to have been injured

⁶ The circumstances of persons living in an apartment complex are not, of course, analogous to those of persons living in a larger community. See pp. 28-29, *infra*. Moreover, the benefits of living in an integrated society are immeasurably more diluted than the benefits of living in a smaller and more discrete integrated community such as an apartment complex. See pp. 14-15, *supra*; pp. 28-29, *infra*.

... or who believes that he will be irrevocably injured by a discriminatory housing practice." 42 U.S.C. § 3610(d). In *Trafficante*, this Court held that the use of "the words ["person aggrieved"] showed 'a congressional intention to define standing as broadly as is permitted by Article III . . . ' insofar as tenants of the same housing unit that is charged with discrimination are concerned." *Trafficante*, *supra*, 209. While Section 3610 provides for broad standing, it does not provide for immediate access to the federal courts. A putative plaintiff must first allow the Secretary of Housing and Urban Development an opportunity to eliminate the alleged discriminatory practice by informal means. 42 U.S.C. § 3610(a). Moreover, if state or local governments provide rights and remedies substantially equivalent to those provided by federal law, the Secretary must allow them an opportunity to resolve the dispute. *Id.*, § 3610(d). In either event, no suit may be brought for an additional thirty days while the conciliation process takes place. *Id.* Finally, no federal court action may ever be brought under Section 3610 if substantially equivalent remedies are available at state law. *Id.*

In Section 3610, Congress expressed a strong commitment both to the use of federal administrative remedies, and to the development of effective state and local remedies, to implement the nation's fair housing policy. In requiring that putative plaintiffs exhaust state and local remedies, Congress recognized the important role that state and local officials have traditionally enjoyed in the housing area. See *Hunter v. Erickson*, 393 U.S. 385, 388 (1969). Congress wisely recognized that our national housing goals could not be attained solely by federal court litigation, but that voluntary compliance and increased efforts by state and local officials were also necessary. The opportunity

for systematic circumvention of these remedies, which is implicit in the Seventh Circuit's construction of Section 3612, will frustrate rather than enhance the attainment of these goals.

Sections 3610 and 3612 must be construed together to best effectuate the purposes of Section 3610's elaborate remedial scheme. The Ninth Circuit's decision in *TOPIC* provides that construction:

While . . . section [3610] provides a remedy for a broad spectrum of individuals aggrieved by discrimination, the judicial system is not the initial forum for relief and thus is protected from a potential excess of litigation. Section 3612 provides preferential access to judicial processes as necessary for those individuals who are the primary victims of the illegal acts of discrimination. Such persons are likely to suffer grave and immediate harm and judicial relief may be necessary for the full vindication of their rights.

TOPIC, *supra*, 1276.

The Ninth Circuit's analysis is supported by both the language and policy of the Fair Housing Act. The broad standing granted by Section 3610 rests on its promise of relief to any "person aggrieved," which demonstrates "a congressional intention to define standing as broadly as is permitted by Article III." *Trafficante*, *supra*, 209. By contrast, Section 3612 does not, in terms, contain any such broad grant of standing. The focus of Section 3612 is more narrow: it merely provides that certain enumerated rights, granted by four other sections of the Act, "may be enforced by civil actions." 42 U.S.C. § 3612(a). Because Congress chose not to use the broad language of Section 3610 in Section 3612, it is obvious that Congress had a more limited objective in mind; namely, that an action could be brought under Section 3612 only by those persons whose rights were directly violated.

Of the four sections which grant rights enforceable under Section 3612, the plaintiffs herein allege a violation of only Section 3604, which proscribes certain discriminatory practices in the "sale or rental" of housing. 42 U.S.C. § 3604. Because the individual plaintiffs were not bona fide home-seekers, they could not have been discriminated against in the sale or rental of housing. Plaintiffs' allegations of racial steering thus constitute an attempt to enforce the Section 3604 rights of others which they believe may have been violated. However, even in cases involving fundamental constitutional rights, such as those protected by the Fourth Amendment, this Court has followed the principle that persons may not assert the rights of others. *Alderman v. United States*, 394 U.S. 165 (1969). The Seventh Circuit apparently believed that enforcement of the Fair Housing Act would be facilitated by permitting parties to assert the rights of others, but that view is erroneous. While certain goals of the Fair Housing Act might be furthered by third-party standing, equally important goals will certainly be frustrated.⁷ Moreover, the Seventh

⁷ By encouraging circumvention of Section 3610 procedures, the Seventh Circuit's decision diminishes both HUD's role in effecting voluntary compliance and the role of state remedies. Actions brought by persons who are not directly affected by alleged discriminatory practices present the ideal circumstances, as Congress realized, for informal conciliation by state and federal officials. The Seventh Circuit's construction will frustrate the efforts of such officials; it is unwarranted under the Act; and it is probably counterproductive in the battle against discrimination. State and local authorities will not be encouraged, as Congress intended, to be active in the regulation of this field, which has been traditionally committed to them. See pp. 19-21, *supra*. Moreover, the potential for serious harassment of innocent parties is greatly increased if the restraining influence of Section 3610 procedures is supplanted by immediate federal litigation in every case.

Circuit's approach is unconvincing, as a matter of policy, in that third-party standing would also facilitate enforcement of the Fourth Amendment, but this Court has rejected that reasoning in the Fourth Amendment area. *Alderman, supra*. The need for enforcing the policy of the Fair Housing Act cannot constitute a more compelling justification for third-party standing than can the need for enforcing fundamental constitutional guarantees.⁸

Recognition of the differences in coverage between Sections 3610 and 3612 is the only construction consistent with the remedial scheme established by Congress. That construction preserves the viability of Section 3610, and it imputes to Congress the rationality which legislative bodies are presumed to possess. The Seventh Circuit's rejection of that construction, on the other hand, rests on an improper understanding of the Act's exceedingly scant legislative history. The Court of Appeals was persuaded by floor statements of three congressmen, one of whom opposed the bill, that the remedial provisions of the two sections were merely alternatives. *Appendix 19*. Those statements are partially correct, of course, because the two sections do provide alternative remedies for direct victims of discrimination. On the other hand, the legislative history contains no evidence that Congress ever considered the possibility that someone, other than a direct victim of dis-

⁸ Moreover, in Fair Housing Act cases, unlike Fourth Amendment cases, an alternative remedy always exists under Section 3610. The Seventh Circuit's construction is also implausible in that it imputes to Congress an intention to create standing in circumstances where it is constitutionally prohibited from doing so. U.S. Const. Art. III; *Trafficante, supra*, 212 (White, J., concurring). See also pp. 25-29, *infra*.

crimination, might sue under the Act. Consequently, the authority of the isolated remarks quoted by the Seventh Circuit is necessarily suspect because those remarks were probably based on the assumption that only direct victims of discrimination could sue under the Act, and that assumption is exactly contrary to the court's use of those remarks. As Justice Douglas observed in *Trafficante*, "The legislative history of the Act is not too helpful." *Trafficante, supra*, 210. Given the ambiguous nature of the legislative history, the Seventh Circuit erred in relying on it to defeat the plain language and remedial structure of the Act.⁹

The decision of the Court of Appeals is inconsistent with the language and remedial structure of the Fair Housing Act. Moreover, it draws little support from legislative history, and it is unjustified by policy considerations. For these reasons, a writ of certiorari should issue to review the judgment of the Court of Appeals.

⁹ The Court of Appeals was also persuaded that plaintiffs had standing because of what it believed to be HUD's interpretation of the Act. *Appendix 20*. The Court's reliance on 24 C.F.R. § 105.16 is misplaced, however, because that regulation concerns only Section 3610 procedures; it does not purport to construe Section 3612. Even if that regulation did purport to construe Section 3612, however, the agency's construction of the statute could not diminish this Court's power to interpret the laws. The determination of standing is a uniquely judicial task, in which this Court may not "abdicate its ultimate responsibility to construe the language employed by Congress." *Zuber v. Allen*, 396 U.S. 168, 193 (1969).

III.

The Decision Of The Court Of Appeals In This Case Is Inconsistent With The Case Or Controversy Limitation Imposed On The Federal Courts By Article III Of The United States Constitution.

The purpose of Congress in enacting the Fair Housing Act of 1968 was "to provide, *within constitutional limitations*, for fair housing throughout the United States." 42 U.S.C. § 3601 (emphasis added). Foremost among constitutional limitations, of course, are those imposed by Article III. U.S. Const. Art. III. As this Court has previously recognized, "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal court jurisdiction to actual cases or controversies." *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 37 (1976). To establish the existence of a justiciable case or controversy, a plaintiff must demonstrate that he will personally suffer a concrete injury in the absence of judicial relief, that prospective relief will remove the harm, and that a plausible causal connection exists between the alleged injury and the defendant's actions. See *Warth v. Seldin*, 422 U.S. 490, 505 (1975). "Concrete injury . . . adds the essential dimension of specificity to the dispute by requiring that the complaining party have suffered a particular injury caused by the action challenged as unlawful." *Schlesinger v. Reservists To Stop War*, 418 U.S. 208, 220-1 (1974). Moreover "a 'generalized grievance' shared in substantially equal measure by . . . a large class of citizens . . . normally does not warrant exercise of jurisdiction." *Warth, supra*, 499.

The Seventh Circuit's decision is inconsistent with the limitations of Article III because the injury alleged is merely a generalized injury, and it is causally related to defendants' alleged activities only in the most attenuated

sense. Plaintiffs' allegations are constitutionally insufficient to constitute a case or controversy.

The individual plaintiffs contend that they were injured because defendants' alleged steering of homeseekers "deprived [plaintiffs] of the social and professional benefits of living in an integrated society." *Gladstone Complaint* ¶ 12; *Hintze Complaint* ¶ 13.¹⁰ The Village of Bellwood claims that it suffered injury because the alleged practice of racial steering resulted in "the economic and social detriment of the citizens of such village." *Gladstone Complaint* ¶ 11; *Hintze Complaint* ¶ 12. This language shows that the Village brings this action derivatively to vindicate the rights of its residents. Contrary to the conclusion reached by the Court of Appeals (*Appendix 14*), the Village's claim is substantially identical to that of the individuals, and the justiciability of those claims must stand or fall together.

Plaintiffs base their claim on an abstract or generalized injury, but this Court has frequently recognized that an abstract injury, even when it implicates cherished values, will not give rise to a case or controversy. For instance, a citizen has a justifiable interest in the proper administration of justice in his community, but the Court has held that that interest will not, by itself, support a chal-

¹⁰ Initially, the individual plaintiffs also alleged that they were "denied their right to select housing without regard to race." *Id.* During discovery, however, they admitted that they had not been injured in this manner because they had acted only as testers in the investigatory stage of this litigation, and they never had any intention of purchasing a home. *Gladstone Plaintiffs' Admissions A-1*; *Hintze Plaintiffs' Admissions A-1*. Moreover, at the time that summary judgment was granted, plaintiffs had failed to support their generalized allegations by identifying any bona fide homeseeker whom they believed to have been steered. *Gladstone Plaintiffs' Answers To Interrogatories 12(d)*; *Hintze Plaintiffs' Answers To Interrogatories 12(d)*.

lenge to unlawful practices in the administration of justice. *O'Shea v. Littleton*, 414 U.S. 488 (1974). See also *Linda R. S. v. Richard D.*, 410 U.S. 614 (1973). In another context, this Court has said that:

In some fashion, every provision of the Constitution was meant to serve the interests of all. Such a generalized interest, however, is too abstract to constitute "a case or controversy" appropriate for judicial resolution. The proposition that all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions has no boundaries.

Schlesinger, supra, 226-7 (footnote omitted). The Court's analysis is equally applicable to statutory provisions.

In limiting the jurisdiction of the federal courts to actual cases and controversies, the framers of Article III determined that alleged illegality, even when it affects values cherished by the community, must be adjudicated by persons whose particularized interests are put directly at issue. Certainly, a citizen's generalized interest in living in an integrated community is an important interest, just as is his interest in living in a community free from judicial impropriety. In both cases, however, Article III requires that the vindication of these generalized interests be undertaken by persons whose particularized interests are also at stake.

Criminal defendants play an important role in our system of government by protecting the community's interest in the impartial administration of justice. Our system of government likewise requires that the generalized right to live in an integrated society must be vindicated in judicial proceedings instituted by persons who are directly affected by discrimination. The decision of the Court of Appeals is, therefore, inconsistent with the central meaning of Article III.

In construing Section 3612 to permit suits by persons who are not direct victims of discrimination, the Court of Appeals erroneously relied on this Court's decision in *Trafficante, supra*. While acknowledging that *Trafficante* was not technically controlling, the Court of Appeals thought that it stood for the broad proposition that an allegation of injury to a citizen's generalized interest in living in an integrated society would categorically assure justiciability. This Court's holding in *Trafficante* was considerably more narrow: the Court merely held that a group of tenants, who complained that their landlord's rental practices deprived them of the benefits of living in an integrated community, had alleged a sufficiently particularized injury to meet the requirements of Article III. The limited nature of the Court's holding is underscored by the separate concurrence of Justice White, joined by Justices Blackmun and Powell, who said that he "would sustain the statute insofar as it extends standing to those in the position of the petitioners in this case." *Id.*, 212 (White, J., concurring).

A tenant's interest in living in an integrated apartment complex is not analogous, for constitutional purposes, to a citizen's interest in living in an integrated society. A citizen's interest in living in an integrated society is necessarily less particularized and more diluted. Likewise, an apartment complex is an artificial and controlled environment in that a landlord's alleged discrimination may be both the necessary and sufficient cause of a tenant's loss of the opportunity to live in an integrated community. By contrast, many independent economic and social forces are implicated when the focus is shifted to a larger community.

In the present case, the plaintiffs' interests as members of a society are infinitely more generalized than the interests at stake in *Trafficante*. Moreover, the alleged causa-

tion between plaintiffs' alleged injury and defendants' alleged activities is singularly attenuated, if it exists at all. Plaintiffs have failed, consequently, "to meet the minimum requirements of Art. III: to establish that, in fact, the asserted injury was the consequence of the defendants' actions, or that prospective relief will remove the harm." *Warth, supra*, 505.

The decision of the Court of Appeals, which permits suits by natural persons and municipalities, who have no particularized interest and can demonstrate only the most attenuated causation, is inconsistent with the limitations imposed on the federal courts by Article III. It is also inconsistent with traditional principles of fairness, which protect defendants against oppressive litigation and multiplicity of suits. For these reasons, a writ of certiorari should issue to review the judgment of the Court of Appeals.

CONCLUSION

For all of the reasons stated herein, petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NO. 75 C 3587

VILLAGE OF BELLWOOD, etc., et al.,

Plaintiffs,

-vs-

GLADSTONE REALTORS, et al.,

Defendants.

MEMORANDUM OPINION

The instant complaint alleges that the defendants, a real estate business and its salespersons and agents, engaged in the illegal practice of racial steering. This consists of efforts to influence the choice of prospective homebuyers on the basis of race by discouraging prospective black homebuyers from purchasing homes in predominantly white areas. The action is based upon Title VIII, the Fair Housing Act of 1968, 42 U.S.C. §3601 *et seq.*, and upon 42 U.S.C. §1982, the Civil Rights Act of 1866.

There are several plaintiffs. The six individual plaintiffs include four white residents of Bellwood, Illinois, and two blacks, one a resident of Bellwood, the other a resident of Maywood, Illinois. These plaintiffs were investigators who audited the defendant for compliance with the civil rights statutes. In the process of this investigation, sev-

eral of the plaintiffs¹ acted as testers, individuals who posed as prospective homebuyers in order to ascertain the practices of the realtor. They assert that they "have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society" by means of defendants' challenged practices. The remaining plaintiffs are Leadership Council for Metropolitan Open Communities, a not-for-profit corporation charged with combatting housing discrimination, and the Village of Bellwood, a municipal corporation located in Cook County. The Leadership Council asserts that the challenged practices interfere with its work and purpose, and that it has been forced to expend sums "to provide an audit and other efforts to eliminate such unlawful acts." The Village of Bellwood complains that it "has been injured by having the housing market in [Bellwood] wrongfully and illegally manipulated to the economic and social detriment of the citizens of [Bellwood]."

Federal jurisdiction has been invoked in this case under 42 U.S.C. §3612 and 28 U.S.C. §§1343(4) and 2201. The defendants have moved for summary judgment.

The evidence before the court reveals that the plaintiffs lack standing to bring this action either under the 1866 Civil Rights Act or under 42 U.S.C. §3612. The plaintiffs have asserted that the acts which constitute the evidence of the alleged racial steering are those described in the audit reports. The instant case therefore does not in-

¹ Several of the testers seemingly were not plaintiffs, and the parties' briefs make it uncertain whether all of the plaintiffs were in fact testers. In any case it is nowhere claimed that any of the plaintiffs were in reality prospective homebuyers.

volve racial steering directed at actual home seekers. As a consequence, the plaintiffs can only claim to have suffered indirect injury from the actions of the defendants.

The factual circumstances and the legal issues of this case closely resemble the recently decided case of *Topic v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976). That action was also based upon 42 U.S.C. §1982 and upon the Fair Housing Act of 1968 by utilizing the jurisdiction provisions of 42 U.S.C. §3612. The plaintiffs included an unincorporated civil rights organization and three individual members. Using investigatory tactics similar to those employed by the Leadership Council in the instant case, Topic sent out housing testers to examine the business practices of real estate brokers in Torrance and Carson, California. The plaintiffs found evidence of racial steering; however, none "were actual homeseekers subjected to racial steering", 532 F.2d at 1274. The injuries complained of by the plaintiffs were substantially identical to those found in the instant complaint, with the obvious exception that the municipalities involved did not join in the *Topic* suit.

The district court determined that the §1982 claim should be dismissed,² and on interlocutory appeal, the Ninth Circuit held that the plaintiffs likewise lacked standing to bring an action under §3612 because that section "does not authorize lawsuits to vindicate the rights of third parties." 532 F.2d at 1275.

² The district court actually noted in a footnote that the plaintiffs could not prosecute a §1982 claim, but omitted the dismissal of that count in its order. The Ninth Circuit treated that as an oversight, and expressly affirmed the dismissal of the §1982 claim. 532 F.2d 1274 fn. 4.

The *Topic* suit, like the present case, asserted a violation of the substantive provisions of 42 U.S.C. §3604,³ which guarantees the right not to be discriminated against in the sale or rental of housing. The Ninth Circuit asserted that a cause of action under §3612 exists only for "the direct victims" of a practice proscribed by §3604. The plaintiffs in *Topic* were held not to be "direct victims".

³ Section 3604 provides:

"As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

"(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

"(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

"(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

"(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

"(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex or national origin."

The plaintiffs in the present case do not challenge the statutory construction reached by the Ninth Circuit.⁴ Their efforts to factually distinguish themselves from the *Topic* plaintiffs are halfhearted and unpersuasive. The inclusion of the municipality in the instant action does not alter the indirect nature of the grievances since Bellwood is challenging in *parens patriae* fashion actions to the detriment of its citizens.⁵

The legal complexities in *Topic* and the instant case arise from the fact that the Fair Housing Act contains two jurisdictional provisions, §3610 and §3612. The former requires the performance of certain preliminary procedures before redress may be sought in federal court. These include the filing of a complaint with the Secretary of Housing and Urban Development. The Secretary is given time to investigate and to attempt an administrative resolution of the dispute. He is directed to give local authorities the first opportunity to resolve the controversy in the event that equivalent procedures are available under state

⁴ The plaintiffs do cite *Bell Realty v. Chicago Commission on Human Relations*, 130 Ill.App.2d 1072 (1st Dist. 1971), for the principle that minority testers have a cause of action if they are denied housing opportunities available to whites. However, that case in fact dealt with a license suspension under a Chicago ordinance. The question of standing under the Fair Housing Act was not even remotely at issue in that case, and the testers were in fact not parties to the proceeding.

On the other hand, the court notes that indirect victims of steering were seemingly allowed to proceed with an action under §3612 in *Zuch v. Hussey*, 394 F.Supp. 1028 (E.D.Mich. 1975). The *Zuch* court however did not consider the standing issue, and the well-reasoned *Topic* opinion is the only Court of Appeals decision dealing with this question.

⁵ The court does not reach the challenge raised by defendants to the standing of a municipal corporation under the Fair Housing Act.

or local law. Thirty days are set aside for conciliation efforts, and the action can be brought in federal district court only in the absence of substantially equivalent state law remedies. By contrast, §3612 provides immediate access to a federal forum without any such preconditions.

The Ninth Circuit carefully analyzed the relationship between these two jurisdictional sections, and determined that Congress intended that the "preferential access to judicial processes" found in §3612 be limited to "those individuals who are the primary victims of the illegal acts of discrimination." 532 F.2d at 1276. The Supreme Court has expansively defined the class of individuals with sufficient standing to bring an action under §3610. *Trafficante v. Metropolitan Life Ins.*, 409 U.S. 205 (1972). The Ninth Circuit properly notes that the procedural prerequisites of §3610 would become meaningless if both it and §3612 had identical standing requirements. The court considered that the conciliation processes of §3610 were particularly needed and appropriate in situations where there was no direct injury and "a delay in plaintiffs' access to court would not significantly worsen plaintiffs' injuries, if at all." 532 F.2d at 1276. To hold to the contrary would render meaningless the statutory pattern and create "a potential excess of litigation" by providing immediate access to federal court for both direct and indirect grievants.

The plaintiffs argue that their situation is more analogous to that found in *Trafficante*. But the Supreme Court only found the existence of standing under §3610; this action is based upon §3612 and upon a §1982 claim.⁶

⁶ The fact that the Supreme Court addressed the question of standing solely in the context of §3610 underscores the Ninth Circuit conclusion that the standing requirements of §3612 may be more restricted.

Trafficante had originally been brought under both 42 U.S.C. §§3610 and 3612 and under 42 U.S.C. §1982. 446 F.2d 1158, 1161 (9th Cir. 1971). The Ninth Circuit held that the plaintiffs lacked standing under the Fair Housing Act provisions and under §1982. In reversing that decision, the Supreme Court expressly did not consider that part of the holding dealing with standing under §1982. 409 U.S. 205 at 208, fn. 8. Thus *Trafficante*, rather than supporting plaintiffs' claim under the 1866 Act, in fact argue against their contention. And both the district court and the Ninth Circuit seemingly agreed in *Topic* that an indirect injury was not protected by §1982.

Inasmuch as the court concludes that the plaintiffs lack standing to present their claim either under the 1866 Act or under the jurisdictional provisions of §3612, the motion for summary judgment in behalf of the defendants should be and hereby is granted and the cause is dismissed.

ENTER:

Bernard M. Decker

United States District Judge

DATED: September 23, 1976.

APPENDIX B

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Joseph Sam Perry

Cause No. 75 C 3589

Date September 29, 1976

Title of Cause

Village of Bellwood, etc., et al. vs. Hintze Realtors, et al.

This cause comes on upon defendants' motion for summary judgment. The court has read and considered said motion and the memoranda of the respective parties in support thereof and in opposition thereto and finds that said motion is well taken and should be granted for the reasons set forth in Judge Decker's thorough and scholarly Memorandum Opinion entered September 23, 1976 in *Village of Bellwood, etc., et al. vs. Gladstone Realtors, et al.*, case No. 75 C 3587, which opinion this court hereby adopts as its own. The court notes that the complaint in the aforecited case is almost a verbatim duplicate of the complaint in the instant case, except of course for the names of the defendants, and that plaintiffs' brief in opposition to defendants' motion for summary judgment in the aforecited case is, likewise, almost a verbatim duplicate of their brief in opposition to the instant motion for summary judgment, again except for the names of the defendants.

Accordingly, it is ORDERED that defendants' motion for summary judgment be and it hereby is granted, and that summary judgment be and it hereby is entered in favor of each defendant herein and against plaintiffs herein, with costs to be assessed against the plaintiffs.

J. S. Perry

APPENDIX C

In the

United States Court of Appeals
For the Seventh Circuit

No. 76-2193

VILLAGE OF BELLWOOD, *et al.*,*Plaintiffs-Appellants,**v.*GLADSTONE REALTORS, *et al.*,*Defendants-Appellees.*

No. 77-1019

VILLAGE OF BELLWOOD, *et al.*,*Plaintiffs-Appellants,**v.*ROBERT A. HINTZE REALTORS, *et al.*,*Defendants-Appellees.*

Appeals from the United States District Court for the
Northern District of Illinois.

Nos. 75 C 3587 & 75 C 3589

Bernard M. Decker & J. Sam Perry, Judges.

ARGUED SEPTEMBER 16, 1977—DECIDED JANUARY 25, 1978

Before PELL, BAUER, and WOOD, *Circuit Judges.*

PELL, *Circuit Judge.* We have before us consolidated appeals from summary judgments granted the defendants

in two lawsuits. In each suit, the same plaintiffs charged a different set of defendants (two real estate brokers and certain individual salespersons) with illegally "steering" prospective homebuyers to differing residential areas in the vicinity of Bellwood, Illinois, on the basis of their race, in violation of the Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. § 1982. Judge Decker, being of the view that the plaintiffs in No. 76-2193 lacked standing to maintain the action, granted summary judgment and ordered the cause dismissed. In No. 77-1019, Judge Perry adopted Judge Decker's Memorandum Opinion and entered a similar judgment.

The individual plaintiffs in these cases are four white residents of Bellwood, and two black persons, one a resident of Bellwood, and one a resident of adjacent Maywood, Illinois. They asserted in their complaints that they "have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society." The Village of Bellwood is also a plaintiff, alleging "injur[y] by having the housing market in such village wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village." The other plaintiff is the Leadership Council for Metropolitan Open Communities, a non-profit corporation devoted to eliminating housing discrimination in the Chicago metropolitan area, which avers that the racial steering attacked here "hamper[s] and interfere[s]" with the Council's mission, and "cost[s] [it] money" to investigate and attempt to eliminate the practice.

Each of the individual plaintiffs in these cases assisted in the prelitigation investigation of defendants' practices. Their role as testers involved posing as prospective home-

buyers in visits to real estate brokers. Couples of different races expressed similar preferences as to type, size, price range, and general location of houses in which they would be interested. The defendants allegedly steered couples making similar requests to houses in different areas, dependent upon the couple's race. All of the tester couples acted solely as investigators; none were making bona fide efforts to purchase homes in the affected area. This fact was deemed critical by both district judges, who held that only the direct victims of actual discriminatory acts had standing to maintain suit under 42 U.S.C. § 3612.

The fact that the individual plaintiffs acted as testers has produced some confusion in these cases, and, before addressing the standing question, it is necessary we clarify the matter. The defendants have argued, *e.g.*, that Congress did not intend to apply the Fair Housing Act to hypothetical cases or to create a remedy for testers, and that the only discrimination attacked produced no injury to anyone because the testers would not have bought a house no matter to what area they were steered. These arguments, at least in part, miss the point. It is true that plaintiffs' discovery admissions that no bona fide homeseekers are in the case negated the complaints' allegations that personal rights "to select housing without regard to race" are implicated here, but the other injuries alleged by the various plaintiffs can and must be assessed without dispositive reference to the role of the individual plaintiffs *qua* testers.

What the testers did was to generate evidence suggesting the perfectly permissible inference that the defendants have been engaging, as the complaints allege, in the *practice* of racial steering with all of the buyer prospects who come through their doors. Racial steering, by its nature, is a subtle form of discrimination that is difficult if not

impossible to prove otherwise than by comparing the areas to which homeseekers of different races are directed. The strength of the inference suggested by such a comparison is not affected by whether or not the "homeseeker" has a bona fide intent to purchase a home. To the degree defendants are seeking to saddle plaintiffs with the argument that testers *qua* testers have a cause of action, they have either misread the complaint or erected a straw man. To the degree the argument is that plaintiffs have failed to comply with Fed.R.Civ.P. 56(e) by showing specifically that racial steering was practiced on true homeseekers, it rings hollow in the light of defendants' refusal to date to provide any of the discovery sought by plaintiffs. Moreover, we think the tester evidence itself creates a triable fact issue.

Turning to the standing problems in the case, we assume, for the present purposes, that defendants have engaged in racial steering and that such a practice violates the federal statutes invoked here.¹ Inquiry into standing focuses on the litigant, not on the merits of his claim. The question is "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf. *Baker v. Carr*, 369 U.S. 186, 204 (1962)." *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (footnote omitted; emphasis in original).

¹ See, e.g., in this regard, *Moore v. Townsend*, 525 F.2d 482, 486 (7th Cir. 1975); *Zuch v. Hussey*, 394 F.Supp. 1028, 1047 (E.D. Mich. 1975); *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071, 1074-76 (D.N.J. 1976) (hereinafter *Bergen County*). Cf. *Johnson v. Jerry Pals Real Estate*, 485 F.2d 528 (7th Cir. 1973).

The constitutional limitations of the federal judicial power to cases and controversies engenders the first rule of standing: that the plaintiff must show actual or threatened injury to himself that is likely to be redressed or avoided by a favorable decision. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976); *Warth, supra*, 422 U.S. at 498, 505 (1975). As to the individual plaintiffs, there is no real doubt that the complaints satisfy this requirement.² *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), demonstrates that. Plaintiffs therein attacked the discriminatory rental practices of the large apartment complex in which they lived, asserting injury in their loss of social and professional benefits from living in an integrated community and in their stigmatization as residents of a "white ghetto." *Id.* at 208. The Supreme Court expressly found these averments to establish injury in fact. *Id.* at 209, 211. We reach the same conclusion about the virtually identical allegations of the individual plaintiffs in the cases which are now before us.³

Trafficante does not control the issue of standing of a municipal corporation to challenge illegal manipulation of its housing market to the "economic and social detriment"

² Neither district court, in fact, questioned the sufficiency of the complaints' allegations of injury in fact, and the defendants' only argument on this point is their assertion that the complaints fail to allege racial steering practiced on bona fide homeseekers, which argument we have rejected *supra*.

³ The Court's emphasis in *Trafficante* was on the "loss of important benefits from interracial associations," *id.* at 210, so we think it insignificant that the individual plaintiffs do not expressly allege stigmatization. Such an allegation, in any event, might well be thought to be implicit in the charge that plaintiffs have been denied the benefits of living in an integrated society.

of its citizens, although some guidance is provided by the Court's recognition that

[t]he person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the [Fair Housing] bill, "the whole community," . . .

Id. at 211 (citation omitted). That much is implicit in our determination that the individual plaintiffs here have alleged actual injury. We need not determine, however, whether or not the Village of Bellwood would have standing if the sole injury alleged was the deprivation to its citizens of the benefits of integrated living. Taking the complaints' allegations as true, and construing them liberally in a light favorable to the Village, *Warth, supra* at 501, it is apparent that specific concrete injury with a substantial nexus to the Village's status as a unit of government could be proved under these complaints. *See Flast v. Cohen*, 392 U.S. 83, 102 (1968). An area targeted as a "changing neighborhood" to which minority homeseekers may be steered could experience unnaturally rapid population turnover, with destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them. *See Zuch v. Hussey, supra*, 394 F.Supp. 1028; *cf. Linmark Associates Inc. v. Township of Willingboro*, 431 U.S. 85 (1977); *Barrick Realty, Incorporated v. City of Gary, Indiana*, 354 F.Supp. 126 (N.D. Ind. 1973), *aff'd*, 491 F.2d 161 (7th Cir. 1974).

By comparison, the actual injury alleged by the Leader-ship Council is rather slight. The complaints do not set out specific injury to Council members which, arguably, the Council might be accorded standing to assert. The sole

allegations are that racial steering interferes with the Council's mission and costs it funds to attack. But the Council's interest in open housing matters and its asserted commitment to effectuating that interest, albeit commendable, do not substitute for the concrete injury constitutionally required to invoke the jurisdiction of the federal courts. *See Simon, supra*, 426 U.S. at 39-40; *Warth, supra*, 422 U.S. at 511-17; *Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972); *Mulqueeny v. National Commission on the Observance of International Women's Year, 1975*, 549 F.2d 1115, 1120-22 (7th Cir. 1977). The alleged dollar cost to the Council of attacking defendants' alleged practices is simply "concomitant to [its] keen concern" about open housing issues, and does not present independently cognizable injury. *Id.* at 1121. For these reasons, we affirm the judgments of the district courts insofar as they dismissed the Council from the action for lack of standing.

Once it is determined that litigants have alleged actual injury, standing inquiry focuses on whether the rights they assert are "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970). We think that the individual plaintiffs and the Village of Bellwood present claims at least arguably within the ambit of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*⁴

⁴ As we stated earlier, plaintiffs also invoke 42 U.S.C. § 1982. Because § 1982 is set up simply as another theory to justify relief on the same facts to which application of the Fair Housing Act is sought, and there is only one count in each of the complaints before us, we have no need to consider standing under § 1982 separately. *See Trafficante, supra*, 409 U.S. at 209 n.8.

Once again, *Trafficante*, *supra*, provides substantial guidance. In affirming the standing of two individuals who asserted precisely the same injury as do the individual plaintiffs here, the Court stated that "the reach of the . . . law was to replace the ghettos 'by truly integrated and balanced living patterns.'" 409 U.S. at 211 (citation omitted). Congress' concern for those who suffer indirectly from discriminatory acts was stressed, *id.* at 210, 211, as was the fact that "complaints by private persons are the primary method of obtaining compliance with the Act." *Id.* at 209. Quoting a Third Circuit opinion⁵ which had found in the Civil Rights Act of 1964 "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution," the Court expressly "reach[ed] the same conclusion" "[w]ith respect to suits brought under the 1968 Act." *Id.* Using this reasoning, we have no difficulty finding that both the Village and the individual plaintiffs here are at least arguably intended beneficiaries of the substantive provisions of the Act.

Of course, if the procedural provisions of the Act which authorize private suits somehow exclude these plaintiffs or condition their access to federal court on meeting requirements which they have not met, the judgments of the district courts would have to be affirmed nonetheless. The possibility that this is so arises because there are two provisions in the Fair Housing Act authorizing private enforcement. The only plaintiffs explicitly discussed in *Trafficante* brought suit under 42 U.S.C. § 3610, which provides that "[a]ny person who claims to have been injured by a discriminatory housing practice [defined in 42 U.S.C. §

⁵ *Hackett v. McGuire Bros., Inc.*, 445 F.2d 442, 446 (3d Cir. 1971).

3602(f) as a violation of sections 3604-3606 of the title] . . . (hereafter 'person aggrieved'))" may file a complaint with the Secretary of Housing and Urban Development for investigation and conciliation, failing the satisfactory resolution of which he or she may commence a civil action in federal court. The plaintiffs here, never having complained to the Secretary, bring suit under 42 U.S.C. § 3612 (a), which provides in part that "[t]he rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy"

The judgments under review are premised on the theory that *Trafficante* establishes broad standing only for suits under § 3610 and that the preferential access to federal courts contained in § 3612 should be limited to direct victims of discriminatory acts. This theory has been adopted in the Ninth Circuit, *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976), *cert. denied*, 429 U.S. 859, and is not without some plausibility. Although there were intervening plaintiffs in *Trafficante* who had not complained to the Secretary and whose standing thus depended on § 3612, *Trafficante v. Metropolitan Life Insurance Company*, 446 F.2d 1158, 1161 n.5 (9th Cir. 1971), the Supreme Court made no express reference to these plaintiffs. We cannot assume that the Court necessarily adjudicated the standing of all the plaintiffs in the case. See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 n.9 (1977). Moreover, the Court in *Trafficante* placed some emphasis on the "person aggrieved" language of § 3610, which language does not appear in § 3612.

These factors make it "impossible to tell with certainty" whether *Trafficante* was meant to control cases arising

under § 3612, *Bergen County*, *supra*, 422 F.Supp. at 1082, even though the *Trafficante* opinion cites and quotes both § 3612 and § 3610 without distinguishing between the two and some of the opinion's language, quoted above, would appear to cover all suits brought under the Act.⁶ Assuming, then, that *Trafficante* does not flatly control this case, we have nonetheless reached the conclusion that *TOPIC* was wrongly decided and the district courts erred in relying on it and dismissing these actions.⁷

Whatever may be the pertinence of *Trafficante*'s holding for these lawsuits, its thrust and rationale plainly suggest that the individual plaintiffs and the Village of Bellwood have standing. As we have noted, the Court emphasized the Congressional policy of protecting all those injured by discriminatory acts and practices, and stressed the critical importance of "private attorneys general in vindicating a policy that Congress considered to be of the highest priority." 409 U.S. at 211. This reasoning would surely apply here, unless there were some reason to think that Congress intended §§ 3610 and 3612 to serve different types of private litigants.

The Ninth Circuit in *TOPIC* purported to find such a reason in the very duality of the statutory scheme. The court reasoned that the "slower, less adversary context

⁶ Also, the Court expressly reserved decision on the *Trafficante* plaintiffs' standing under 42 U.S.C. § 1982, 409 U.S. at 209 n.8, but made no such reservation as to issues pertaining to § 3612.

⁷ This opinion has been circulated among all judges of this court in regular active service. No judge favored a rehearing *en banc* on the position taken in the opinion rejecting the approach of the Ninth Circuit in *TOPIC*. Judge Tone did not participate in the consideration.

of administrative reconciliation and mediation" was a fitting route to relief for the broad class of those injured under *Trafficante*'s standards while the direct preferential access" to the courts set out in § 3612 must have been intended for those who needed judicial relief most, *i.e.*, those directly injured. 532 F.2d at 1276. The *TOPIC* opinion provides no evidence at all that such was in fact the contemplation of Congress, nor have the district courts or the defendants herein offered any.

Indeed, the only legislative history cited to us is inconsistent with the notion of § 3610 as a "slower," less preferred route to relief for those less needy of immediate redress. Open housing legislation was before the Congress as early as 1966. When the possibility of an administrative remedy was first proposed, it was supported on the grounds that it would provide quicker, less expensive, and fairer relief. 112 CONG. REC. 18402, 18405, 18409 (1966) (remarks of Representative Conyers); *id.* at 18409 (remarks of Representative Vivian). At least one Congressman opposed the proposal because it would duplicate relief under the direct judicial method. *Id.* at 18401, 18405 (remarks of Representative McClory).

During House debates in 1968 on the legislation ultimately adopted, Representative Celler, the bill's floor manager, explained the various remedial provisions as simply alternatives, drawing no distinctions between them. 114 CONG. REC. 9560 (1968). Representative Ford introduced an analysis prepared by the staff of the Judiciary Committee which described § 3612 as "apparently an alternative to the conciliation-then-litigation approach [contained in § 3610]. . . ." *Id.* at 9612.

In a variety of contexts, federal courts have treated §§ 3610 and 3612 as independent alternative remedies.

See, e.g., *Marr v. Rife*, 503 F.2d 735, 739 (6th Cir. 1974); *Miller v. Poretsky*, 409 F.Supp. 837, 838 (D.D.C. 1976); *Young v. AAA Realty Company of Greensboro, Inc.*, 350 F.Supp. 1382, 1384-85 (M.D.N.C. 1972); *Crim v. Glover*, 338 F.Supp. 823, 825 (S.D. Ohio 1972); *Johnson v. Decker*, 333 F.Supp. 88, 90-92 (N.D. Cal. 1971); *Brown v. Lo Duca*, 307 F.Supp. 102 (E.D. Wis. 1969). We reach the same conclusion here, and hold that there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612. Accord, *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F.Supp. 486 (E.D.N.Y. 1977); *Bergen County, supra*; and see *Village of Park Forest v. Fairfax Realty*, P-H Eq. Opp. Hsing. Rptr. ¶ 13,699 (N.D. Ill. 1975), and P-H. Eq. Opp. Hsing. Rptr. ¶ 13,784 (N.D. Ill. 1976); *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975). Our decision is supported by the fact that HUD, which has significant responsibilities in the administration of the Fair Housing Act, apparently makes no distinction between the two classes. 24 C.F.R. 105.16 (1976). See *Trafficante, supra*, 409 U.S. at 210.

It may to some degree seem to offend a judicial penchant for consistency to say that Congress has, in the same act, established an administrative remedy and authorized plaintiffs, at their discretion, to bypass it. The answers are, first, that such a judicial penchant does not give a court the license to write into a statute a distinction Congress never intended, and, second, that there is sense in such a scheme. The administrative provisions of § 3610 merely make available the good offices of HUD for conciliation and settlement purposes. Nothing akin to adjudication is to be undertaken, and HUD lacks the power to provide the

complainant with any coercive relief. Conciliation through HUD may well be productive in a given case, notwithstanding the toothless nature of the remedy, but it is by no means unreasonable to allow the complainant, who may well have had direct experience with the alleged discriminator, to make that choice. That, in any event, in our opinion, is the course Congress has chosen.

For the reasons set out herein, we decide that the individual plaintiffs and the Village of Bellwood⁸ have standing to litigate these lawsuits. The judgments of the district courts are to that extent reversed, and affirmed insofar as they dismissed out the Leadership Council as a plaintiff, and the cases are remanded for further proceedings not inconsistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

A true Copy:

Teste:

Clerk of the United States Court of
Appeals for the Seventh Circuit

⁸ In a single sentence at oral argument, counsel for defendants advanced the argument, not mentioned in their brief, that the Village lacks standing because it is not a "person" as defined in 42 U.S.C. § 3602(d). That section does not limit "person" to natural persons, but sets out a broad range of organizations, including "corporations," within the definition. The Village is a municipal corporation, and we see no reason, or at least defendants have shown none, to construe § 3602(d) to exclude that type of corporation.

77-1493

APPENDIX

Supreme Court, U. S.

FILED

AUG 3 1978

MICHAEL RODAK, JR., CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1977

GLADSTONE, REALTORS,[®] et al.,

Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,

Respondents.

ROBERT A. HINTZE, REALTORS,[®] et al.,

Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,

Respondents.

On Petition For A Writ of Certiorari To The United States Court
Of Appeals For The Seventh Circuit

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

Petition for Certiorari Filed April 19, 1978

Certiorari Granted June 12, 1978

**In the
Supreme Court of the United States**

OCTOBER TERM, 1977

GLADSTONE, REALTORS,[®] et al.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,
Respondents.

ROBERT A. HINTZE, REALTORS,[®] et al.,
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On Petition For A Writ of Certiorari To The United States Court
Of Appeals For The Seventh Circuit

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APPENDIX

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

VILLAGE OF BELLWOOD, a municipal corporation of the State of Illinois, THE LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES, a not-for-profit corporation of Illinois, EDWARD B. POWELL, MARY P. POWELL, CHARLES ELLIOTT, VICKI SIMMONS, SANDRA T. SHARP and JOYCE PERRY,

Plaintiffs,

- vs -

GLADSTONE REALTORS, JAMES D. DOEHRING, ROBERT J. CASEY, TED WOLNIK, BEVERLEY RICHUTO, WILLIAM JAKES, and CAROL HOSNEDL,

Defendants.

RELEVANT DOCKET ENTRIES

10/24/75 Filed complaint and 7 copies. (JS-5)
10/31/75 Filed plaintiff's Interrogatories.
10/31/75 Filed plaintiffs' Request for Production of Documents to be Inspected and Copies. msn
11/17/75 Filed defendants' Notice of Filing; Motion to Dismiss.
2/ 9/76 Enter order dated 2/5/76: It appearing to the court that defendants herein filed their motion to dismiss the above cause on November 17, 1975. However, a check of the docket and file reveals that neither supporting nor opposing briefs

Relevant Docket Entries

have been filed. It is therefore ordered that if defendants intend to support their motion by a brief, such brief shall be filed within ten days from this date; plaintiffs shall have ten days thereafter to file an opposing brief, and defendants five days thereafter for a reply brief.
—Decker, J.

Notices mailed 2/9/76 msn

2/11/76 Filed Defendant's Discovery Request.
(First Wave) msn

3/31/76 Enter order dated 3/29/76; Defendants moved on November 17, 1975 to dismiss the instant cause, asserting that the complaint failed to state a cause of action under either 42 USC 1982 or 42 USC 3604. On February 6, 1976 this court ordered defendants' supporting brief to be filed within 10 days; none has been filed. Inasmuch as no brief has been filed and the complaint on its face does state a claim for relief under the above statutes, the motion to dismiss is hereby denied.—Decker, J.

Notices mailed 3/31/76 msn

7/ 6/76 Filed defendants' motion for summary judgment.

9/27/76 Enter order dated September 23, 1976: Memorandum Opinion filed. Defendants' motion for summary judgment is granted and the cause is ordered dismissed. JS-6 Decker, J.

Mailed notices 9/27/76 ag

10/ 4/76 Filed plaintiffs' motion to reconsider ag

10-21-76 Filed plaintiffs' notice of appeal \$5.00 pd

Relevant Docket Entries

11-1-76 Enter order dated 10-29-76; Motion to reconsider taken under advisement.—Decker, J.

Mailed notices 11-1-76 ij

11-8-76 Enter order dated November 5, 1976; The plaintiffs have moved for reconsideration of this court's order granting summary judgment in behalf of the defendants on the grounds that they lack standing to present their claim under the statutes utilized. The court feels that *Topic v. Circle Realty*, 532 F. 2d 1273 (9th Cir. 1976) is dispositive of this case and cannot be factually distinguished. The inclusion of the municipality as a plaintiff does not alter the indirect nature of the injury asserted in the complaint. *Topic* offers a compelling construction of the statutory pattern, and deals with an issue not previously decided in this Circuit. While the plaintiffs are free to attempt to persuade the Seventh Circuit to disagree with the view expressed in *Topic*, the court finds no basis for altering its previous opinion. Accordingly, the motion to reconsider is hereby denied.

—Decker, J.

Notice mailed 11-8-76 gg

Complaint

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

COMPLAINT
(Filed October 24, 1975.)

Now Come the Plaintiffs, Village of Bellwood, a municipal corporation of the State of Illinois, The Leadership Council For Metropolitan Open Communities, a not-for-profit corporation of the State of Illinois, Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp, and Joyce Perry, by their attorneys F. Willis Caruso and David J. Parsons, and complain of Defendants, Gladstone Realtors, James D. Doehring, Robert J. Casey, Ted Wolnik, Beverley Ricchuto, William Jakes, and Carol Hosnedl, as follows:

1. This action arises under 42 U.S.C. §1982 and 42 U.S.C. §§ 3601 et seq. Jurisdiction is conferred on this court by 28 U.S.C. §1343(4) and §2201, and 42 U.S.C. §3612.

2. Plaintiff, Village of Bellwood, is a municipal corporation of Illinois located in the County of Cook.

3. Plaintiff, The Leadership Council For Metropolitan Open Communities, is an Illinois not-for-profit corporation charged with providing for equal opportunity in housing and the elimination of discrimination in housing in the six-county Chicago metropolitan area.

4. Plaintiffs, Sandra T. Sharp and Joyce Perry are and were at all times relevant hereto black citizens of the United States of America who reside in Cook County, Illinois.

Complaint

5. Plaintiffs, Edward B. Powell, Mary P. Powell, Charles Elliott, and Vicki Simmons, are and were at all times relevant hereto white citizens of the United States of America who reside in Cook County, Illinois.

6. Defendant, Gladstone Realtors, is an Illinois real estate business with offices located at 10401 W. Cermak Road, Westchester, and 5331 St. Charles Road, Berkeley, in the County of Cook and the State of Illinois.

7. Upon information and belief Defendants, James D. Doehring, Robert J. Casey, Ted Wolnik, William Jakes, Carol Hosnedl and Beverley Ricchuto are real estate salespersons and agents of Defendant, Gladstone Realtor.

8. On or about September 15, 1975 and prior thereto and continuing to the date thereof, Defendants, Gladstone Realtors, James D. Doehring, Robert J. Casey, Ted Wolnik, Beverley Ricchuto, William Jakes, and Carol Hosnedl, undertook efforts to influence the choice of prospective homebuyers on the basis of race, and discouraged prospective black homebuyers from purchasing homes in white areas on the basis of race, thereby engaging in unlawful racial steering in violation of 42 U.S.C. §1982 and 41 U.S.C. §3604 in an area described as follows: An area bound on the North by the Northwestern Railroad, on the East by Belt Lines Railroad, on the South by the Eisenhower Expressway and on the West by Mannheim Road. The homebuyers who are affected are those in the above area; and those who used or sought to use the services of Defendant, Gladstone Realtor, and may have been so influenced or discouraged based on race.

9. In doing the acts complained of, Defendants acted intentionally and maliciously and were guilty of wilful and wanton disregard of the rights of the Plaintiffs.

Complaint

10. Such acts and practices complained of hamper and interfere with the work and purpose of the Plaintiff, The Leadership Council For Metropolitan Open Communities and cost The Leadership Council For Metropolitan Open Communities money to provide an audit and other efforts to eliminate such unlawful acts.

11. Plaintiff, Village of Bellwood, has been injured by having the housing market in such village wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village.

12. The individual Plaintiffs have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society.

13. Plaintiffs have no adequate remedy at law, or otherwise, for the harm done by Defendants, and Plaintiffs are suffering great and irreparable loss and will continue to suffer great and irreparable loss unless the acts and conduct of Defendants are enjoined.

Wherefore, Plaintiffs pray:

(1) That the Court declare individual Plaintiffs cannot be denied the right to inspect, negotiate for purchase of, and/or purchase homes on the basis of race;

(2) That the Court issue an injunction permanently restraining and enjoining Defendants from illegal racial steering, and enjoining Defendants from any efforts to illegally influence the choice of prospective homebuyers from purchasing homes in particular areas because of race, and/or from encouraging prospective homebuyers to purchase a home in particular areas based on race;

Complaint

(3) That the Court grant actual damages of One Hundred Thousand Dollars (\$100,000.00) and Fifty Thousand Dollars (\$50,000.00) exemplary and/or punitive damages each to the Village of Bellwood, and The Leadership Council For Metropolitan Open Communities;

(4) That the Court grant actual damages and exemplary and/or punitive damages of Five Thousand Dollars (\$5,000.00) each to Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp and Joyce Perry;

(5) That the Court grant reasonable attorney's fees and costs and such other relief as the Court may deem just and proper.

/s/ *F. Willis Caruso*
Attorney for the Plaintiffs

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Plaintiffs' Interrogatories

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

PLAINTIFFS' INTERROGATORIES
(Filed October 31, 1975.)

Now Come Plaintiffs, by their attorneys, and propound the following interrogatories to be answered under oath by the defendants individually.

1. State your full name. With respect to the corporate defendant, state the nature of the business entity, the date founded, all predecessors and successors and assigns. State the name and authority of the person answering for the corporate defendant.

2. State the names and addresses of all other persons having knowledge or information of the matters and incidents described in the Complaint filed in this case. State whether any statements were obtained from any of these persons by you, your agents, or your attorneys, the name and address of each such person, and the date of such statement; if so, attach a copy of each such written statement.

/s/ F. Willis Caruso

Attorney for Plaintiffs

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Request for Documents

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

REQUEST FOR PRODUCTION OF DOCUMENTS
TO BE INSPECTED AND COPIED
(Filed October 31, 1975.)

Plaintiffs, by their attorney, pursuant to Rule 34 of the Federal Rules of Civil Procedure request Defendant Gladstone Realtors to produce designated documents as described below at 2:00 p.m. on the 25th day of November, 1975, at the offices of Gladstone Realtors, 10401 W. Cermak Road, Westchester, Illinois.

At which time the Plaintiffs, said attorney, and persons acting on their behalf shall be allowed to inspect and copy documents described as follows:

1. All listings of residential real estate either listed exclusively with Gladstone Realtors or available to said defendant for sale through multiple listing or otherwise from October 1, 1974 through October 25, 1975.

2. All office documents relating to residential real estate available for sale including, but not limited to, lists, memoranda, reports, reports of listed properties, sale reports and the like from October 1, 1974 through October 25, 1975.

3. All documents relating to names, addresses and telephone numbers of prospects for purchase of residential property, talked to, contacted and/or interviewed by sales personnel of Defendant Corporation, including, but not limited to, prospect cards, notes, memoranda, telephone

Request for Documents

prospect sheets or cards, call-back lists, reports of showings, reports of prospects, prospect books and the like from October 1, 1974 through October 25, 1975.

4. All documents showing the addresses of all residential real estate shown and/or offered to the prospects revealed by the documents requested in 3 above.

5. All newspaper ads and other advertisements for all properties listed for sale including ads for individual homes as well as display ads from October 1, 1974 through October 25, 1975.

6. All records and documents showing contracts entered into and sales consummated by the Defendant Corporation and its predecessor from October 1, 1974 through October 25, 1975 including, but not limited to all documents showing:

- a) the address of properties sold;
- b) address of Defendant Corporation's office consummating said sale;
- c) name or names of salespersons consummating said sale for Defendant Corporation;
- d) names of salespersons sharing in or paid a commission for said sale;
- e) whether any of the above sales were as a result of referrals from other real estate entities;
- f) names, addresses and race of the persons purchasing said properties;
- g) the immediate prior address of the persons purchasing said properties; and

Request for Documents

- h) names, race and present address of the sellers of said properties.

/s/ *F. Willis Caruso*
Attorney for Plaintiffs

F. Willis Caruso
407 So. Dearborn Street
Suite 1360
Chicago, Illinois 60605
(312) 341-9345

David J. Parsons
Seyfarth, Shaw, Fairweather
& Geraldson
55 E. Monroe
42nd Floor
Chicago, Illinois 60603
(312) 346-8000

CERTIFICATE OF SERVICE

Rachael Davis, being duly sworn on oath deposes and states that she mailed the foregoing Plaintiffs' Interrogatories, Plaintiffs' Request For Production of Documents To Be Inspected And Copied, as well as Notice of Filing, to James D. Doebling, 10401 W. Cermak Road, Westchester, Illinois and 5331 St. Charles Road, Berkeley, Illinois, by depositing true and correct copies of same in the United States mailbox at 407 So. Dearborn Street, Chicago, Illinois 60605, this 31st day of October, 1975, at or before the hour of 5:00 p.m.

/s/ *Rachael Davis*
Rachael Davis

Subscribed to and sworn before
me this 31st day of October, 1975.

/s/ *Della Brunson*
Notary Public
My Commission expires Oct. 19, 1979
(Seal)

Notice; Motion to Dismiss

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

NOTICE OF FILING
(Filed November 17, 1975.)

To: F. Willis Caruso
Attorney for Plaintiffs
407 S. Dearborn Street
Suite 1360
Chicago, Illinois 60605

Please Take Notice that on the 17th day of November, 1975, we filed with the Clerk of the United States District Court for the Northern District of Illinois, defendants' Motion to Dismiss, a copy of which is herewith served upon you.

Jonathan T. Howe
Attorney for Defendants

Jenner & Block
One IBM Plaza
Chicago, Illinois 60611
222-9350

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

MOTION TO DISMISS

Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, defendants move this court for an order dismissing the complaint in the above-entitled cause on the following grounds:

1. This Court lacks jurisdiction in this case because the complaint does not state a cause of action under 42

Motion to Dismiss

U.S.C. §1982 or 42 U.S.C. §§3601 *et seq.* "Racial steering" as alleged in the complaint does not state a violation of 42 U.S.C. §1982 and §3604, even if the allegations were true.

2. Since as a matter of law the allegations do not state a cause of action under the above statutes, this Court has no jurisdiction under 28 U.S.C. §1343 (4), 28 U.S.C. §2201, and 42 U.S.C. §3612. No other ground for jurisdiction is alleged or proper in this case.

Respectfully submitted,
/s/ Jonathan T. Howe
Jonathan T. Howe
Attorney for Defendants

Jenner & Block
One IBM Plaza
Chicago, Illinois 60611
222-9350

CERTIFICATE OF SERVICE

Dorothy Keller, on oath deposes and states that she caused a copy of the foregoing Notice of Filing and Motion to Dismiss to be served on F. Willis Caruso, Attorney for Plaintiffs, 407 S. Dearborn Street, Suite 1360, Chicago, Illinois 60605, by placing a true and correct copy of same in an envelope, properly addressed with postage prepaid and depositing same in the U.S. Mail at One IBM Plaza, Chicago, Illinois 60611, this 17th day of November, 1975.

/s/ Dorothy Keller

Subscribed and sworn to
before me this 17th day
of November, 1975.
/s/ Ruth Schwoegler
Notary Public
(Seal)

Defendants' Discovery Request

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

(Title omitted in printing.)

DEFENDANTS' DISCOVERY REQUEST

(First Wave)

(Filed February 11, 1976)

As their first wave discovery request in this case, defendants submit the following Interrogatories, Request to Product (*sic.*) and Request to Admit to plaintiffs:

INTERROGATORIES

11. With respect to each plaintiff,

(a) State his full name and each other name by which he has been known since age 18.

(b) State his present home address and each other address at which he has resided since age 18, indicating the dates of each such residence.

(c) State his home telephone number.

(d) State his social security number.

(e) Identify his present employer and each other employer since age 18.

(f) Identify each officer, director and principal managing agent of plaintiff The Leadership Council for Metropolitan Open Communities and with respect to each officer and principal managing agent describe his duties in that capacity.

(g) Identify each official or agent of plaintiff Village of Bellwood who has authorized the bringing of this suit on its behalf.

(h) Identify each official and agent of the Village of Bellwood who has knowledge of the injury alleged in paragraph 11 of the Complaint.

Defendants' Discovery Request

(i) Identify each officer and agent of plaintiff The Leadership Council who has knowledge of the money expended by said plaintiff to provide the audit and other efforts referred to in paragraph 10 of the Complaint.

(j) Identify the officer or agent of plaintiff The Leadership Council who is best able to testify to the types of records maintained and to the record keeping and filing procedures of said party.

(k) If any of the plaintiffs are members of a Block Club, identify the Block Club and each officer, principal managing agent and spokesperson therefor.

(l) If any of the individual plaintiffs is or has been a party to a lawsuit (other than the instant case) or a defendant in a criminal case, state with respect to each such plaintiff the full caption of the case (including case number, court and all parties) and give a brief description of the nature of the case.

12. With respect to the allegations contained in paragraph 8 of the Complaint:

(a) Identify each act and/or communication of each defendant which you contend is evidence of an effort on his part to influence the choice of prospective homebuyers on the basis of race.

(b) Identify each act and/or communication of each defendant which you contend is evidence of his discouraging prospective black homebuyers from purchasing homes in white areas on the basis of race.

(c) Identify each act and/or communication of each defendant which you contend is evidence of his engaging in unlawful racial steering in violation of 42 U.S.C. § 1982 and 41 (*sic.*) U.S.C. § 3604.

Defendants' Discovery Request

(d) Identify each homebuyer who you contend used or sought to use the services of Gladstone Realtor and whose choice was influenced on the basis of race.

(e) Identify each homebuyer who used or sought to use the services of Gladstone Realtor who was discouraged from purchasing a home on the basis of race.

13. Identify each person whom plaintiffs expect to call as an expert witness at trial and with respect to each:

(a) State the subject matter on which the expert is expected to testify.

(b) State the substance of the facts and opinions to which the expert is expected to testify.

(c) State a summary of the grounds for each said opinion.

(d) State the title of the case, case number, court and date(s) on which said expert has testified (either at trial or in deposition) on behalf of any plaintiff herein or on the same subject matter as his expected testimony herein.

14. With respect to the allegations contained in paragraph 10 of the Complaint:

(a) State the amount of money expended by The Leadership Council to provide an audit.

(b) Identify the recipients of all said moneys.

15. Do you contend that the Village of Bellwood has expended money as a result of any of defendants' activities which are complained of in the Complaint herein?

(a) If the answer is yes, state the amount of money so expended by the Village of Bellwood.

(b) Identify the recipients of all said moneys.

16. With respect to each oral conversation between or among each plaintiff, or anyone purporting to act on his

Defendants' Discovery Request

(their) behalf, and each defendant, or anyone purporting to act on his (their) behalf, from January 1, 1975 to the present time:

(a) Identify the parties to the conversation.

(b) State the date of the conversation.

(c) State the location of the conversation and identify all persons present.

(d) If the conversation was by phone, state who called whom.

(e) State what was said by each party to the conversation or, if unable to do so, state the substance of what was said by each party to the conversation and indicate that it is the substance rather than the exact words that is being reported.

17. Do plaintiffs contend that each of the defendants discouraged prospective black homebuyers from purchasing homes in white areas on the basis of race?

(a) If the answer is yes, with respect to each defendant identify the black homebuyer and state the date of the discouragement.

(b) If the answer is no, identify those defendants as to whom you claim such activity and with respect to each identify the black homebuyer and state the date of the discouragement.

18. Identify each person not heretofore identified in response to Interrogatory I1 through Interrogatory I7, both inclusive, who has knowledge of any fact upon which the Complaint herein is based and with respect to each such person state the substance of the facts as to which he has knowledge.

19. Have plaintiffs withheld any documents called for in the Request to Produce submitted herewith because of

Defendants' Discovery Request

a claim of privilege or work product? If the answer is yes, state with regard to each such document:

- (a) The date of the document.
- (b) The nature of the document (e.g. letter, memorandum, tape recording, etc.).
- (c) The author of the document.
- (d) The subject matter of the document.
- (e) The length of the document.
- (f) The addressee of the document.
- (g) Identify all persons known to plaintiffs to have seen the document or a copy thereof.
- (h) The nature of the privilege or work product claim.

REQUEST TO PRODUCE

Pursuant to Rule 34 of the Federal Rules of Civil Procedure plaintiffs are requested to produce for inspection and copying by attorneys for defendants the following designated documents. The production is to be made in the law offices of Jenner & Block, 43rd Floor, One IBM Plaza, Chicago, Illinois 60611 commencing at 10:00 a.m., March 1, 1976:

R1. Each document which relates or refers to or which is evidence of each act and communication identified by plaintiffs in response to interrogatory I2, including without limitation each document to which plaintiffs referred or which they used to refresh their recollection in verifying the answer to interrogatory I2.

R2. The curriculum vitae for each expert witness named in response to interrogatory I3.

R3. Each previous deposition transcript and previous transcript of trial testimony of each expert witness identified in the answer to interrogatory I3.

Defendants' Discovery Request

R4. Each document which refers or relates to or which is evidence of the amount of money and recipients of said money stated in response to interrogatory I4, including without limitation each document to which plaintiffs referred or which they used to refresh their recollection in verifying the answer to interrogatory I4.

R5. Each document which refers or relates to or which is evidence of the amount of money and recipients of said money stated in response to interrogatory I5, including without limitation each document to which plaintiffs referred or which they used to refresh their recollection in verifying the answer to interrogatory I5.

R6. Each document which relates or refers to, which is evidence of, or which purports to summarize, either wholly or in part, each conversation identified in response to interrogatory I6.

R7. Each document which relates or refers to or which is evidence of each fact stated in response to interrogatory I7, including without limitation each document to which plaintiffs referred or which they used to refresh their recollection in verifying the answer to interrogatory I7.

R8. Each document which refers or relates to or which is the product of the audit referred to in paragraph 10 of the Complaint.

R9. Each document which was produced by or received by plaintiffs, and each of them, from January 1, 1975 to the present time which refers to each and any of the following:

- (a) James D. Doebling
- (b) Robert J. Casey
- (c) Ted Wolnik
- (d) Beverly Ricchiuto
- (e) William Jakes

Defendants' Discovery Request

(f) Carol Hosnedl

(g) Complaints of racial steering by Gladstone Realtors.

R10. Each document which contains instructions to the testers to conduct an audit concerning defendants.

R11. Each document which purports to summarize or collate the results of the audit concerning defendants.

R12. Each document sent to each defendant by each plaintiff (with the exception of the Village of Bellwood) and each document received by each plaintiff (with the exception of the Village of Bellwood) from each defendant from January 1, 1975 to the present time.

R13. Each document which purports to instruct the testers in the procedure to be followed in conducting an audit.

R14. Each document which plaintiffs' contend constitutes evidence of the economic and social detriment suffered by the citizens of the Village of Bellwood as a result of defendants' conduct.

R15. Each document which plaintiffs intend to introduce in evidence at the trial of this case and each document which plaintiffs intend to use to refresh the recollections of witnesses whom they intend to call in this case.

REQUESTS FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure plaintiffs are requested to admit the truth of the following matters:

A1. None of the individual plaintiffs who had conversations with the defendants had the intention at the time of said conversations of purchasing a home.

A2. None of the individual plaintiffs who had conversations with the defendants informed the defendants that

Defendants' Discovery Request

they were conducting an audit on behalf of The Leadership Council For Metropolitan Open Communities.

A3. None of the individual plaintiffs has had any conversation or business contact with defendant Ted Wolnik.

A4. None of the individual plaintiffs has had any conversation or business contact with defendant Beverly Ricchiuto.

DEFINITIONS

As used in this discovery request the following words and phrases are defined as shown below:

1. "Document" means any writing, drawing, graph, chart, photograph, tape recording, wire recording, computer print-out and other data compilation from which information can be obtained, translated, if necessary, by plaintiffs through detection devices into reasonably usable form.

2. "Identify" when referring to an employer means the business name, address and phone number of the entity for whom plaintiff works or worked and the name and last known address of plaintiff's immediate supervisor on said job.

3. "Identify" when referring to a person means his full name and last known address, telephone number, business affiliation and job title.

4. "Identify" when referring to an act means to describe the act, state the date of the act, name the actor and identify all known witnesses to the act.

5. "Identify" when referring to a communication means to state the date and content of the oral communication identifying all parties and witnesses to the oral communication and stating what was said by each and means to state the date, author and type of document of a written communication.

Defendants' Discovery Request

6. When used herein the masculine gender of pronouns is meant to include the feminine gender as well and singular nouns are meant to include the plural as well.

Russell J. Hoover

Russell J. Hoover

One of the Attorneys for Defendants

Jonathan T. Howe

Russell J. Hoover

JENNER & BLOCK

One IBM Plaza

Chicago, Illinois 60611

222-9350

Attorneys for Defendants

PROOF OF SERVICE

Margrett Kontek on oath states that she served a copy of the foregoing Defendants' Discovery Request (First Wave) in case No. 75 C 3587 by placing same in an envelope addressed to F. Willis Caruso, Esq., 407 South Dearborn Street, Suite 1360, Chicago, Illinois 60605, with proper, prepaid postage affixed thereto and by placing same in the United States Government mail chute at One IBM Plaza, Chicago, Illinois on Monday, February 2, 1976 before the hour of 4:00 p.m.

Margrett Kontek

SUBSCRIBED AND SWORN to
before me this 2nd day
of February, 1976.

Virginia Blaski

Notary Public

(Notary Seal)

Order

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

(Title omitted in printing.)

ORDER DENYING MOTION TO DISMISS

(Filed March 29, 1976)

Defendants moved on November 17, 1975, to dismiss the instant cause, asserting that the complaint failed to state a cause of action under either 42 U.S.C. §1982 or 42 U.S.C. §3604. On February 6, 1976, this court ordered defendants' supporting brief to be filed within 10 days; none has been filed. Inasmuch as no brief has been filed, and the complaint on its face does state a claim for relief under the above statutes, the motion to dismiss is hereby DENIED.

Bernard M. Decker

Judge

Notice of Filing

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

NOTICE OF FILING
(Filed April 2, 1976)

TO: Jonathan T. Howe
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

PLEASE TAKE NOTICE that on the 2nd day of April, 1976, we filed with the clerk of the United States District Court for the Northern District of Illinois, Answers to Defendants' First Set of Interrogatories, copies of which are herewith served upon you.

F. Willis Caruso
F. Willis Caruso
Attorney for Plaintiffs

F. Willis Caruso
Marie V. Sanon
407 So. Dearborn
Suite 1360
Chicago, Illinois 60605
341-9345

Answers to First Interrogatories

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

ANSWERS TO DEFENDANTS' FIRST SET
OF INTERROGATORIES

Pursuant to the Federal Rules of Civil Procedure, Rule 33, Plaintiffs, Village of Bellwood, a municipal corporation of the State of Illinois, The Leadership Council For Metropolitan Open Communities, a not-for-profit corporation of Illinois, Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp and Joyce Perry, hereby answers the interrogatories propounded by Defendants, as follows:

II. With respect to each plaintiff,

(a) State his full name and each other name by which he has been known since age 18.

Answer: See Appendix A*

(b) State his present home address and each other address at which he has resided since age 18, indicating the dates of each such residence.

Answer: See Appendix A*

(c) State his home telephone number.

Answer: See Appendix A*

(d) State his social security number.

Answer: See Appendix A*

(e) Identify his present employer and each other employer since age 18.

Answer: See Appendix A*

(f) Identify each officer, director and principal managing agent of plaintiff The Leadership Council For Metro-

Answers to First Interrogatories

politan Open Communities and with respect to each officer and principal managing agent describe his duties in that capacity.

Answer: See Appendix B, Kale Williams, Executive Director of the Leadership Council, 407 So. Dearborn, Suite 1360, Chicago, Illinois, 60605. Thomas G. Ayers, Chairman, Frederick G. Jaicks, President, and Edwin C. Berry, Vice President.

(g) Identify each official or agent of plaintiff Village of Bellwood who has authorized the bringing of this suit on its behalf.

Answer: See Appendix E.

(h) Identify each official and agent of the Village of Bellwood who has knowledge of the injury alleged in paragraph 11 of the Complaint.

Answer: See Appendix E.

(i) Identify each officer and agent of plaintiff The Leadership Council who has knowledge of the money expended by said plaintiff to provide the audit and other efforts referred to in paragraph 10 of the Complaint.

Answer: Kale Williams, Executive Director, 407 So. Dearborn, Suite 1360, Chicago, Illinois 60605.

(j) Identify the officer or agent of plaintiff The Leadership Council who is best able to testify to the types of records maintained and to the record keeping and filing procedures of said party.

Answer: Kale Williams, Executive Director, 407 So. Dearborn, Suite 1360, Chicago, Illinois 60605.

(k) If any of the plaintiffs are members of a Block Club, identify the Block Club and each officer, principal managing agent and spokesperson thereof.

Answer: See Appendix A*.

Answers to First Interrogatories

(1) If any of the individual plaintiffs is or has been a party to a lawsuit (other than the instant case) or a defendant in a criminal case, state with respect to each such plaintiff the full caption of the case (including case number, court and all parties) and give a brief description of the nature of the case.

Answer: *Objection:* Irrelevant, immaterial, not discoverable. However, plaintiffs state that they have suffered no criminal conviction other than minor traffic convictions.

I2. With respect to the allegations contained in paragraph 8 of the Complaint:

(a) Identify each act and/or communication of each defendant which you contend is evidence of an effort on his part to (influence the choice of prospective homebuyers on the basis of race.)

Answer: The act of Defendants which allegedly violate 42 U.S.C. §1982 and 42 U.S.C. §3601 et seq. are the subject matter of the audit reports.

1) With respect to Plaintiff Edward Powell, See Appendix A.

2) With respect to Plaintiff Mary P. Powell, See Appendix A.

3) With respect to Plaintiff Charles Elliott, See Appendix A.

4) With respect to Plaintiff Vicki Simmons, See Appendix A.

5) With respect to Plaintiff Joyce Perry, See Appendix A.

6) With respect to Plaintiff Sandra J. Sharp, See Appendix A.

(b) Identify each act and/or communication of each defendant which you contend is evidence of his discouraging

Answers to First Interrogatories

prospective black homebuyers from purchasing homes in white areas on the basis of race.

Answer: See answer to I2(a).

(c) Identify each act and/or communication of each defendant which you contend is evidence of his engaging in unlawful racial steering in violation of 42 U.S.C. §1982 and 41 (sic.) U.S. §3604.

Answer: See answer to I2(a).

(d) Identify each homebuyer who you contend used or sought to use the services of Gladstone Realtor and whose choice was influenced on the basis of race.

Answer: The plaintiff auditors were acting in the capacity of homebuyers. See Appendix A.

(e) Identify each homebuyer who used or sought to use the services of Gladstone Realtor who was discouraged from purchasing a home on the basis of race.

Answer: See answer to I2(d).

I3. Identify each person whom plaintiffs expect to call as an expert witness at trial and with respect to each:

(a) State the substance of the facts and opinions to which the expert is expected to testify.

Answer: Pierre DeVise; Demographics.

(b) State the substance of the facts and opinions to which the expert is expected to testify.

Answer: See Appendix D.

(c) State a summary of the grounds for each said opinion.

Answer: See Appendix D.

(d) State the title of the case, case number, court and date(s) on which said expert has testified (either at trial or in deposition) on behalf of said plaintiff herein or on the same subject matter as his expected testimony herein.

Answers to First Interrogatories

Answer: *Metropolitan Housing Development Corporation v. Arlington Heights*, 517 F.2d 409 7th Circuit Court of Appeals.

I4. With respect to the allegations contained in paragraph 10 of the Complaint:

(a) State the amount of money expended by the Leadership Council to provide an audit.

Answer: \$375.00.

(b) Identify the recipients of all said moneys.

Answer: John Woltjen, 407 So. Dearborn, Suite 1360, Chicago, Illinois 60605.

I5. Do you contend that the Village of Bellwood has expended money as a result of any of defendants' activities which are complained of in the Complaint herein?

Answer: No.

(a) If the answer is yes, state the amount of money so expended by the Village of Bellwood.

Answer: Not Applicable.

(b) Identify the recipients of all said moneys.

Answer: Not Applicable.

I6. With respect to each oral conversation between or among each plaintiff, or anyone purporting to act on his (their) behalf, and each defendant, or anyone purporting to act on his (their) behalf, from January 1, 1975 to the present time:

(a) Identify the parties to the conversation.

Answer: See Appendix A.

(b) State the date of the conversation.

Answer: See Appendix A.

(c) State the location of the conversation and identify all persons present.

Answer: See Appendix A.

Answers to First Interrogatories

(d) If the conversation was by phone, state who called whom.

Answer: See Appendix A.

(e) State what was said by each party to the conversation or, if unable to do so, state the substance of what was said by each party to the conversation and indicate that it is the substance rather than the exact words that is being reported.

Answer: See narratives in audit reports, Appendix A. The individual plaintiffs have from time to time conversed with each other, however, the substance and dates of those conversations are not specifically available, but are embodied in Appendix A.

17. Do plaintiffs contend that each of the defendants discouraged prospective black homebuyers from purchasing homes in white areas on the basis of race?

Answer: Yes, the individual plaintiffs in this matter were auditors acting in the capacity of homebuyers.

(a) If the answer is yes, with respect to each defendant identify the black homebuyer and state the date of the discouragement.

Answer: See Appendix A.

(b) If the answer is no, identify those defendants as to whom you claim such activity and with respect to each identify the black homebuyer and state the date of the discouragement.

Answer: Not Applicable.

18. Identify each person not heretofore identified in response to Interrogatory I1 through Interrogatory I7, both inclusive, who has knowledge of any fact upon which the Complaint herein is based and with respect to each such person state the substance of the facts as to which he has knowledge.

Answers to First Interrogatories

Answer: Lonnie Randolph conducted an audit, See Appendix A. John Lindsey conducted an audit, See Appendix A. Kathleen Nichols conducted an audit, See Appendix A. Sandra Sharp is a plaintiff who resides in Bellwood, who has read the answers to interrogatories.

19. Have plaintiffs withheld any documents called for in the Request to Produce submitted herewith because of a claim of privilege or work product? If the answer is yes, state with regard to each such document:

Answer: No.

(a) The date of the document.

Answer: Not Applicable.

(b) The nature of the document (e.g. letter, memorandum, tape recording, etc.).

Answer: Not Applicable.

(c) The author of the document.

Answer: Not Applicable.

(d) The subject matter of the document.

Answer: Not Applicable.

(e) The length of the document.

Answer: Not Applicable.

(f) The addressee of the document.

Answer: Not Applicable.

(g) Identify all persons known to plaintiffs to have seen the document or a copy thereof.

Answer: Not Applicable.

(h) The nature of the privilege or work product claim.

Answer: Not Applicable.

Answers to First Interrogatories

REQUESTS FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure plaintiffs admit the truth to the following matters:

A1. None of the individual plaintiffs who had conversations with the defendants had the intention at the time of said conversations of purchasing a home.

Answer: Admit.

A2. None of the individual plaintiffs who had conversations with the defendants informed the defendants that they were conducting an audit on behalf of the Leadership Council For Metropolitan Open Communities.

Answer: Admit.

A3. None of the individual plaintiffs has had any conversation or business contact with defendant Ted Wolnik.

Answer: Admit.

A4. None of the individual plaintiffs has had any conversation or business contract with defendant Beverley Richuto.

Answer: Admit.

Appendix A*

Vicki Simmons

4004 Warren Ave.

Bellwood, IL

544-4375

SS#—336-40-9073

Previous Address—

7340 Wrightwood, Elmwood Park

2137 No. Nagle, Chicago

Mary P. Powell (Mary P. Puricelli)

111 30th Ave.

Bellwood, IL

544-7691

SS#—320-42-5915

Answers to First Interrogatories

Previous Address—

2115 25th Ave., Broadview, IL—6/69-2/71

17 Ashbel, Hillside, IL—1948-6/69

Charles L. Elliott

3211 Jackson

Bellwood, IL—1967-Present

544-2803

SS#—349-32-4252

Previous Address—

4210 N. Kimball, Chicago,—1954-1963

4108-6 Melrose—1963-1967

Kathleen Nichols

928 Bellwood

Bellwood, IL

544-0081

SS#—Refused to Release

Previous Address—

5229 W. Race—1952-1969

2402 N. New England, Chicago—1969-1974

Lonnie Randolph

12101 S. Emerald

Chicago, IL—1974-Present

928-6556

SS#—307-54-8254

Previous Address—

4950 Kennedy, East Chicago, IN

625 W. Wrightwood—1973-1974

Employer:

Masonite Corp., 17050 Lathrop Ave., Harvey, IL

Mobil Oil

Leadership Council, 407 So. Dearborn, Chicago, Illinois

Answers to First Interrogatories

John Lindsey

7343 Prairie

Chicago, IL—1974-Present

224-5512

SS#—353-30-0044

Previous Address—

2801 King Drive, Chicago, IL—1968-1970

2951 King Drive, Chicago, IL—1971-1974

Joyce Perry

134 Granville

Bellwood, IL

544-5074

SS#—274-42-0584

Previous Address—

1668 Bryn Mawr, E. Cleveland, OH, 1967-1971

1412 Madison, Maywood, IL—1971-1975

Sandra J. Sharp

1401 S. 16th Ave.

Maywood, IL

345-1762

SS#—339-36-4853

Previous Address—

228 N. LaCrosse, Chicago, IL—1970-to-date

4639 W. West End Ave., Chicago, IL—1965-1966

513 N. Homan Ave., Chicago, IL—1964-1965

Edward B. Powell

111 30th Ave.

Bellwood, IL

544-7691

SS#—358-34-1199

Previous Address—

2115 25th Ave., Broadview, IL—1969-1971

159 Bode Road, Hoffman Estate, IL—1968-1969

552 N. Avers, Chicago, IL—1955-1969

Answers to First Interrogatories

EMPLOYMENT INFORMATION

Lonnie Randolph

Standard Oil of Indiana, Whiting, Indiana

Inland Steel, East Chicago, Indiana

Atlantic Richfield, East Chicago, Indiana

Citco Oil Refinery

Walgreen Co., Chicago, Illinois

Mobil Oil Corp., Niles, Illinois

Masonite Corp., Chicago, Illinois

Leadership Council, Chicago, Illinois—Present

Block Club: None

Never a criminal defendant

Other Litigation: *Randolph vs. Rynberk*, 74 C 3671

John Lindsey

Chicago Board of Education

Leo Burnett Advertising Agency

Tuesday Publications

Living Together Publications

Leadership Council,—Present

Block Club: 73rd & Prairie; Pres. George Lee

Never a criminal defendant

Other Litigation: None

Vicki Simmons

Capon Drugs, Beakley, IL

Block Club: Bellwood Block Club; Chairman—Ross

Ferraro

Chairwoman—Jean Keating; Treasurer—Joyce Lev;

Secretary—Vicki Simmons

Never a criminal defendant

Other Litigation: None

Mary P. Powell

Stanadyne, Bellwood, IL

Block Club: None

Answers to First Interrogatories

Never a criminal defendant

Other Litigation: Bellwood v. Gladstone Realty, 75 C 3587; Bellwood v. Hintze, 75 C 3589; Bellwood v. Dwayne Realty, 75 C 3588

Edward B. Powell

MTTR Associates, Westchester, IL
Four Phase System, Des Plaines, IL
Servitech, Inc., Westchester, IL
Hypertech, Inc., Harwood Heights, IL
Xerox Data Systems, Chicago, IL
First National Bank of Chicago, Chicago, IL

Block Club: None

Never a criminal defendant

Other Litigation: Meade Electric vs. Powell, 75 Mi 112178;
Bellwood v. Gladstone, 75 C 3587; Bellwood v. Dwayne, 75 C 3588; Bellwood v. Hintze, 75 C 3589

Charles Elliott

Oscar Mayer & Co., Chicago, Illinois
Fredricks Catering Service, Oak Park, Illinois
Lincoln Bottling Co., Chicago, Illinois
Alloy Automotive Co., Chicago, Illinois
Keebler Co., Elmhurst, Illinois
Motorola, Inc., Chicago, Illinois
Brunswick Corp., Skokie, Illinois—Present

Block Club: Bellwood Block Club; Chairman—Ross Ferraro, Chairwoman—Jean Keating, Treasurer—Joyce Lev, Secretary—Vicki Simmons

Never a criminal defendant

Other Litigation: Bellwood vs. Hintze, 75 C 3589; Bellwood v. Dwayne Realty, 75 C 3588; Bellwood v. Gladstone, 75 C 3587

Kathleen Nichols

Government employee (Refused to be more specific)

Block Club: None

Answers to First Interrogatories

Never a criminal defendant

Other Litigation: None

Sandra Sharp

Village of Maywood—Present
School District #89
Tetailers Commercial Agency

Block Club: None

Never a criminal defendant

Other Litigation: Plaintiff in *Sandra T. Sharp and Carolyn Bailey v. School District #89, 1973*; *Bellwood v. Hintze*
•Plaintiff Sandra Sharp is a citizen of Bellwood who has read the Answers to Interrogatories.

Joyce Perry

Lenerae Electric, Cleveland, Ohio
Calvert Distillers, Cleveland, Ohio
Guiliford & Sons, Cleveland, Ohio
Lenerae Electric, Broadview, IL
Lien Chemical Co., Franklin Park, IL

Block Club: None

Never a criminal defendant

Other Litigation: Bellwood v. Dwayne, 75 C 3588

/s/ *Kale Williams*
Kale Williams

Subscribed to and sworn before me

this 2 day of April, 1976.

(Seal)

/s/ *David A. Schucker*

Notary Public

My Commission Expires November 15, 1977

F. Willis Caruso

Marie Sanon

407 So. Dearborn St.

Suite 1360

Chicago, Illinois 60605

341-9345

*Answers to First Interrogatories**/s/ Charles Elliott*

Charles Elliott

Subscribed to and sworn before me
this 2 day of April, 1976.

/s/ David A. Schucker

Notary Public

(Seal)

My Commission Expires November 15, 1977

F. Willis Caruso

Marie Sanon

407 So. Dearborn St.

Suite 1360

Chicago, Illinois 60605

341-9345

/s/ Mary P. Powell

Mary P. Powell

Subscribed to and sworn before me
this 2 day of April, 1976.

/s/ David A. Schucker

Notary Public

(Seal)

My Commission Expires November 15, 1977

F. Willis Caruso

Marie Sanon

407 So. Dearborn St.

Suite 1360

Chicago, Illinois 60605

341-9345

/s/ Vicki Simmons

Vicki Simmons

Subscribed to and sworn before me
this 2 day of April, 1976.

/s/ David A. Schucker

Notary Public

(Seal)

My Commission Expires November 15, 1977

Answers to First Interrogatories

F. Willis Caruso

Marie Sanon

407 So. Dearborn St.

Suite 1360

Chicago, Illinois 60605

341-9345

/s/ Edward B. Powell J

Edward B. Powell

Subscribed to and sworn before me
this 2 day of April, 1976.

/s/ David A. Schucker

Notary Public

My Commission Expires November 15, 1977

F. Willis Caruso

Marie Sanon

407 So. Dearborn St.

Suite 1360

Chicago, Illinois 60605

341-9345

/s/ Joyce Perry

Joyce Perry

Subscribed to and sworn before me
this 2 day of April, 1976.

/s/ David A. Schucker

Notary Public

(Seal)

My Commission Expires November 15, 1977

F. Willis Caruso

Marie Sanon

407 So. Dearborn St.

Suite 1360

Chicago, Illinois 60605

341-9345

Exhibits attached to Interrogatories

AFFIDAVIT OF SERVICE

Rachael Davis, being duly sworn on oath and deposes and states that she gave the foregoing Answers to Defendants' First Set of Interrogatories to a messenger sent by Johnathan T. Howe, Jenner & Block, One IBM Plaza, Chicago, Illinois 60611, here at 407 So. Dearborn Street, Chicago, Illinois, at or before the hour of 5:00 p.m. on the 2nd day of April, 1976.

/s/ Rachael Davis

Rachael Davis

Subscribed to and sworn before me
this 2 day of April, 1976.

/s/ David A. Schucker

Notary Public

(seal)

My Commission Expires November 15, 1977

EXHIBIT 4

SALES AUDIT REPORT FORM

Auditor's Race: Cau.

Auditor's Name: Edward B. Powell

Auditor's Address: 111 30th, Bellwood

Auditor's Phone Number: 544-7691 — (457-6682—work)

Real Estate Firm's Name: Gladstone

Phone Number: 544-6800

Real Estate Firm's Address: 5331 St. Charles, Berkeley

Date and Time of Inquiry: 12:30, 9/16/75

Real Estate Agent's Name: Donald Wagner

Addresses and Listing Prices of Properties Offered for Sale:

	<i>Address</i>	<i>Price</i>
1.
2.
3.
4.

Exhibits attached to Interrogatories

Addresses and Listing Prices of Properties Seen:

	<i>Address</i>	<i>Price</i>
1.	405 Fredrick, Bellwood	\$38,500
2.	324 St. Paul, Bellwood	\$38,900
3.	414 Marshall, Bellwood	\$41,500
4.	3716 Butterfield, Bellwood	\$40,900

Information Given to the Agent by the Auditor:

Name: Edward Powell Phone Number: 885-2113

Address: Hoffman Estates

Family Size: 2 small children

Income: Not asked Downpayment: \$10,000

Present Home Sold Or Up For Sale? rent duplex

Credit Information (if any): not asked

State Exactly What You Asked For When You Entered
The Real Estate Office:

3 bedroom brick in either Westchester, Broadview, Bellwood, Berkley, Hillside. We asked for high 30's low 40's. State In A Narrative Form Your Conversation With the Real Estate Agent:

Salesman gave us listing book to look at and said he will show us any home we wanted to see. When we picked a home on Zulke Drive out he said he could show us better homes of the same type if we were interested. He said if we did not see anything in the book he would take us to the homes he thought were the best for the money.

No comments were made about race. No homes picked to see by salesman were near Zulke Drive or in the section east of Mannheim and South of Madison even tho many houses in that area were in the book.

Exhibits to Answers to Interrogatories

Donald H. Wagner
Sales Co-Ordinator
Residence Phone: 340-2221



Gladstone, Realtors

3331 St. Charles Rd. / Berkeley, Illinois 60413 / 340-2221

120-56

This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 3716 Butterfield Road	LOT SIZE: 35.8 x 157	LIV. AREA: 6-4	CODE: 120-5-6
CITY: Bellwood	BEDS: 3	BATHS: 1 CT	6-4
CONSTR: Brick	HEAT: GAS FA	COST: \$684	40,900
STYLE: Ranch	SPR. ADJUT: None	GARAGE: 2-CBT	
P.O. 1961	BUILT: 1961	A.O.:	

ROOMS: Full

1st Living room, kitchen with dining area, 3 bedrooms, bath

2nd

POSSESSION: 30 days after closing

REASON FOR SALE: Relocating

REMARKS: McKinley

FIN. N/A

MORTGAGE: \$3,000 Westchester 3/L

INCLUSIONS AND PERSONAL PROPERTY: Carpeting in living room and 1 bedroom. Combination aluminum storm bath. All drapes & curtains. Gas range & refrigerator. Patio at rear door. Window air conditioner. No FHA or VA.

OWNER: CIACCIO, Anthony & Josephine

EXCLUSIVE AGENT: MEYER REALTY SERVICE

SALES PERSON: Office

BUS. PHONE: 547-0481

RES. PHONE: 544-3550

PHONE: 544-3550

TITLE FORM: CT & T

SHOWING INSTR. Call first

69

Exhibits to Answers to Interrogatories

This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 3724 St. Paul Avenue	LOT SIZE: 60 x 125	LIV. AREA: 6-4	CODE: 329-57
CITY: Bellwood	BEDS: 4	BATHS: 1 1/2	6-4
CONSTR: Brick/Cedar	HEAT: GAS FA	COST: \$716	38,900
STYLE: Bi-Level	SPR. ADJUT: None	GARAGE: None	
P.O. 1961	BUILT: 1961	A.O.:	

ROOMS: Full

1st Living rm, dining rm, 3 bedrooms, family rm, kitchen & 1/2 bath

2nd 1 bedroom with walk-in closet

POSSESSION: 90 days after closing

REASON FOR SALE: Relocating

REMARKS: McKinley - St. Simon - Proviso West

FIN. N/A

MORTGAGE: Westtown - CTA

INCLUSIONS AND PERSONAL PROPERTY: Wall to wall carpeting in living room, dining room, hallway & 2 bedrooms. Fenced yard. 2 sheds; 1 gym set; patio. Aluminum S/S; 3 aluminum doors. Space heater in family room. Mirror in dining room. Air conditioner in family room. Family room is paneled. All drapes.

NO FHA or VA

OWNER: DICKEY, Edward A. Jr., Rita H.

EXCLUSIVE AGENT: GLADSTONE, REALTORS, West

SALES PERSON: WJ

BUS. PHONE: 544-9276

RES. PHONE: 562-6500

PHONE: 562-6500

TITLE FORM: TORRENS

SHOWING INSTR. Call first

208-56

This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 414 Marshall	LOT SIZE: 140 x 140	LIV. AREA: 6-4	CODE: 208-56
CITY: Bellwood	BEDS: 6	BATHS: 3	6-4
CONSTR: Brick	HEAT: GAS FA	COST: \$610	41,500
STYLE: Georgian	SPR. ADJUT: None	GARAGE: 1 1/2-CBT	
P.O. 1961	BUILT: 1961	A.O.:	

ROOMS: Full - finished, tiled floor, shower in basement

1st Kitchen, dining room, living room

2nd 3 bedrooms, 1 bath

POSSESSION: October 15, 1975

REASON FOR SALE: Bought in California

REMARKS: N/A

FIN. N/A

MORTGAGE: AVAILABLE

INCLUSIONS AND PERSONAL PROPERTY: All aluminum storms & screens & awnings. Washer & dryer in basement stay. Kitchen tiled. New floor. Stove & refrigerator & chandelier in dining room are all negotiable. All carpeting & drapes stay in home. Shutters upstairs stay. New garage. Aluminum siding on garage. Ultra sharp inside & out!! Landscaping Fan-tas-tic!

OWNER: KRAFFT, Eugene & Sally

EXCLUSIVE AGENT: GLADSTONE, REALTORS - Berkeley

SALES PERSON: JO

BUS. PHONE: 544-1143

RES. PHONE: 544-6800

PHONE: 544-6800

TITLE FORM: CT & T

SHOWING INSTR. Call before showing

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Exhibits to Answers to Interrogatories

Location: 405 Fredrick		6-3-1		10 x 127		E-2474		\$ 38,500.	
Directions: Rollwood		Rooms and Description		Lot Size		3		Price	
7	Floor	1st	2nd	3rd	4th	5th	6th	7th	8th
Rooms, Details, Descriptions and Notes									
Bedrooms	1	1	1	1	1	1	1	1	1
8.8 x 11.7 SDC Carp.		12.6 x 11.5		10.6 x 11		11 x 18 Carp.		10.6 x 14.6 Carpet	
11 x 10.3 Stove, curtain		loads of built in stor-		AGG.		Plaster		Provision	
Refrigerator in unsement. All		drapes and curtains. Swag lamp does not		stay. 3 air conditioners. Dining room		fixture to be replaced. Dog kennel does		not stay.	

Owner: SPLITT, Jerome & Donna Phone 544-7629

Agent: CLADSTONE REALTY, 2331 W. St. Charles St., Berkeley, Rhode 00163
Phone: 244-8830 Salesman: Bev Ricchiuto

Exhibits attached to Interrogatories

9-28-75

Talked with C. Hosnedl, Gladstone. Walked into office, picked up two "Home" magazines. Asked if she could help me. Told her I was interested in buying a home. Asked for particulars. Said 3 bedroom brick, preferably ranch, dining room & basement desirable but not necessary. Asked if I had dining room set, said no. Asked how old a home we desired—under 20-25. Priced between \$35-40,000 w/ 20-25% down. Started showing listing book—Westchester first area. Said homes started at over 40, so that would eliminate that area. I said "maybe I shouldn't say this, but we're willing to go as high as \$45,000." Asked about the current mortgage rate, said she knew she could get 9% + 1½% closing fee.

When she asked if I would require a basement—told her it wasn't a requirement, but would like one for my son to play in winter. After mentioning my son—told her he was of school age and wanted an area that had excellent schools, so he wouldn't have to go to a private one. Said all the schools in that general vicinity were excellent. Continue to browse thru listing book. Told her I was becoming confused & headachey from all the homes and would she pick out a few, so I would show to my husband. She did.

Asked about a map of the area, about two times, said she did not have one of the general areas, just specific ones, ie Bellwood. I said maybe my husband would pick one up or I could get one at the gas station, said she doubted whether we could get one at a gas station. While she was removing the listing sheets, I asked about the "HOMES", La Grange Area. Said that area tends to run higher—did not pursue. Asked about 95% financing, said couldn't get—maybe 90% but would run 10% + 1½%. Said I would show husband and call, said she would be busy Tuesday, and if I had any trouble locating areas to call her.

Exhibits to Answers to Interrogatories

116

35 x 125

6-4

43,900

5

1-3/4

Brick

Raised Ranch

1968

Sunrise

680.01

Will be paid

Side Drive

NO. 1

RECREATION ROOM - 3/4 bath - utility room

LIVING RM, kitchen and dining area, 3 bedrooms & bath

90 days or sooner

McKinley - St. Simon

West Towns - 1 block

Central Fed. S/L

CENTRAL AIR CONDITIONED

Wall to wall carpet in living room & stairs. Curtains, drapes & shades. DRAPES IN LIVING ROOM DO NOT STAY. Built-in oven & range. BAR IN REC. ROOM DOES NOT STAY. Aluminum baked enamel soffits. 5/5 & 5/doors. Cyclone fenced yard.

A QUALITY BUILT HOME VERY WELL MAINTAINED Many Extras

OWNER: ANISPE, Ralph V. & Theresa

BUS. PHONE: 544-8776

RES. PHONE: 344-0830

EXCLUSIVE AGENT: CENTURY 21, KATIE REALTY

SALES PERSON: [Signature]

TITLE FORM: C T & T

SHOWING INSTR. Call first

F.I.A. ☒ YES ☐ NO

451-56

1012 Cernan

6-4

38,900

40 x 105 5/8

6

3

1 1/2

Brick

Bi-Level

None

2-CAR

Partial - Recreation room

LIVING room, dining room, cabinet kitchen, C1 bath & bedroom.

2 bedrooms

30 days after closing

Lincoln - St. Simon

Water Pk Showers

Wall to wall carpeting in living room, dining room, hall, 3 bedrooms, recreation room & both baths. Aluminum 5/5 & 2 aluminum 5/doors. Fenced yard. Newly painted outside.

DO NOT LET CAT OUT. NO FHA or VA

Have key for side door. Do not open front door or basement door.

OWNER: BREHM, Edward & Helen

BUS. PHONE: 544-9458

RES. PHONE: 544-9180

EXCLUSIVE AGENT: CENTURY 21 - HILLSIDE REALTY

SALES PERSON: WM & EF

TITLE FORM: C T & T

SHOWING INSTR. Call 1st

Key # 10

F.I.A. ☒ YES ☐ NO

Exhibits to Answers to Interrogatories

193-56

239 Zuelke Drive

6-4

39,500

40 x 105 FP

6

3

1 1/2

Brick

Bi-Level

9 yrs

Sunrise

650

Street lights

2-CAR

RECREATION room - utility room - 3/4 bath

LIVING rm, dining rm, kitchen, 1 bedroom, ceramic tile bath

2 bedrooms

90 days after closing

McKinley - St. Simon - Proviso West

Northwestern

West Towns

AVAILABLE

CENTRAL air; hardwood floor; wall to wall carpeting in living room, dining room & hall. Drapes in living room & dining room. Built-in oven/range. Aluminum storms & screens.

NO FHA -- Seller will consider VA

OWNER: DELLUTRI, Robert J. & Darlene

BUS. PHONE: 544-3021

RES. PHONE: 544-6800

EXCLUSIVE AGENT: GLADSTONE, REALTORS - Berkeley

SALES PERSON: JO

TITLE FORM: C T & T

SHOWING INSTR. Call first

F.I.A. ☒ YES ☐ NO

201-56

338 S. 32nd Ave.

6-4

34,900

42 x 129

5

3

1

Brick

Ranch

19 yrs

Carlson

630

Street lights

2-CAR

Full

LIVING room, kitchen, 3 bedrooms, bath

90 days

Roosevelt

Relocating

Carpeting in living room, drapes in living room. Annings.

NO FHA or VA

OWNER: CRAZZINI, Frank A., Genevieve

BUS. PHONE: 544-8218

RES. PHONE: 345-6030

EXCLUSIVE AGENT: GOLZ REALTY

SALES PERSON: [Signature]

TITLE FORM: Torrens

SHOWING INSTR. Call

F.I.A. ☒ YES ☐ NO

Exhibits to Answers to Interrogatories

This information is considered accurate but no warranty is made for errors. The listing may be changed without notice.	ADDRESS: 2632 S. 11th	LOT SIZE: 51 x 136	LIV. AREA: 6-4	CODE: 415-57
	CITY: Broadview	NO. OF BDR: 7	BATHS: 3	HEAT: GAS FA
	CONSTR: Brick	STYL: 1 CT	COST: \$45,000	
	STYL: Tri-Level	SPR. ASMT: GARAGE: 2-CAR		
	M-D: P	TAXES: \$526		
	BUILT: 21 yrs ago: Tyson			
ASMT: Half - Recreation rm. Sump pump		ROOM SIZES:		
1st Living room, dining room, kitchen, Den		LN 17 x 15		
2nd 2 bedrooms		DR 10 x 15		
3rd 1 bedroom		K 13 x 12.6		
		BR 24 x 15		
		BR 12 x 9.6		
		BR 13.6 x 9		
POSSESSION: 60 days a/c or to be arranged		REASON FOR SALE: Smaller		
SCHOOL: Lindop - St. Eulalia - Proviso East		MTGE. AVAILABLE:		
MORTGAGE:		TITLE FORM:		
INCLUSIONS AND PERSONAL PROPERTY: Wall to wall carpeting throughout. Garage has water & electric. Draperies, shades(except living room drapes. Built-in oven & range. Dryer. Double S/S sink. Modern kitchen & bath. 25 x 10 patio with canopy. Humidifier. Storage space galore. Yard with fruit trees. Immaculate home. A pleasure to show!		C T & T		
		SHOWING INSTR. Call first		
OWNER: PULCIANI, Tony & Lucille		BUS. PHONE: F13-6428		
EXCLUSIVE AGENT: GLADSTONE, REALTORS-Westchester		PHONE: 562-6500		
SALES PERSON: CH		CB		

This information is considered accurate but no warranty is made for errors. The listing may be changed without notice.	ADDRESS: 110 Eastern Avenue	LOT SIZE: 35 x 145	LIV. AREA: 6-4	CODE: 382-56
	CITY: Bellwood	NO. OF BDR: 5	BATHS: 3	HEAT: GAS FA
	CONSTR: Brick	STYL: 1 PT	COST: \$35,500	
	STYL: BI-Level	SPR. ASMT: GARAGE: 2-CAR		
	M-D: P	TAXES: \$630		
	BUILT: 1960	SPR. ASMT: 50 yrs		
ASMT: Partial		ROOM SIZES:		
1st Living room, kitchen, 3 bedrooms & full bath		LN 19 x 12		
2nd 1 bedroom.		DR 15 x 11		
		BR 14 x 12		
		BR 12 x 10		
		BR 12 x 9		
POSSESSION: Immediate at closing		REASON FOR SALE: VA conv. 30 Con.		
SCHOOL: McKinley - St. Simeon		MTGE. AVAILABLE:		
MORTGAGE:		TITLE FORM:		
INCLUSIONS AND PERSONAL PROPERTY: Garage has electronic door opening device. Aluminum S/S & 2 aluminum S/S doors. Outdoor TV antenna. Cyclone fence. Air conditioner in living room. Fibreglass & aluminum canopy over patio. 1 fibreglass & aluminum canopy over side entrance. 2 fibreglass & aluminum awnings on South side of building.		C T & T		
HOME IS IN SPOTLESS CONDITION BOTH INSIDE & OUTSIDE		SHOWING INSTR. Key Q Gold Realty		
Maywood Proviso State Bank, Trustee Trust #3359		F.I.A. <input type="checkbox"/> YES		
OWNER: GOLZ, F. T. Sole Beneficiary.		<input type="checkbox"/> NO		
EXCLUSIVE AGENT: GOLZ REALTY		BUS. PHONE: 345-6030		
SALES PERSON:		PHONE: 345-6030		

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Exhibits to Answers to Interrogatories

This information is considered accurate but no warranty is made for errors. The listing may be changed without notice.	ADDRESS: 2118 S. 19th Avenue	LOT SIZE: 37 x 125	LIV. AREA: 6-4	CODE: 498-57
	CITY: Broadview	NO. OF BDR: 6	BATHS: 3	HEAT: GAS FA
	CONSTR: Brick	STYL: 1	COST: \$34,900	
	STYL: Georgian	SPR. ASMT: GARAGE: 1 1/2-CAR		
	M-D: P	TAXES: \$514		
	BUILT: 1960			
ASMT: Full - painted wall & floor - toilet-recreation rm.-partially paneled & tiled ceiling.		ROOM SIZES:		
1st Living rm, dining room, kitchen		LN 12 x 20		
2nd 3 bedrooms.		DR 10.8 x 11.8		
		K 10.9 x 8		
		BR 9.6 x 11		
		BR 8.6 x 10		
		BR 10.8 x 14		
POSSESSION: 11-20-75		REASON FOR SALE: Villa Park		
SCHOOL: Roosevelt		MTGE. AVAILABLE:		
MORTGAGE: None		TITLE FORM:		
INCLUSIONS AND PERSONAL PROPERTY: Tiled kitchen. Rug in living room & dining room. Flood control. Tiled bath with vanity sink. New roof. Cyclone fence. 2 aluminum doors. 8 fiberglass awnings. S/S storm.		C T & T		
		SHOWING INSTR.		
NO FHA or VA		F.I.A. <input type="checkbox"/> YES		
OWNER: MARKOWSKI, Florian & Eva		<input type="checkbox"/> NO		
EXCLUSIVE AGENT: KOULES REALTY INC.		BUS. PHONE: F13-4368		
SALES PERSON:		PHONE: 343-4230		

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*Exhibits attached to Interrogatories***EXHIBIT 4: SALES AUDIT REPORT FORM**

Auditor's Race Black

Auditor's Name: John R. Lindsey

Auditor's Address: 7343 S. Prairie

Auditor's Phone Number: 224-5512

Real Estate Firm's Name: Gladstone

Phone Number: 544-6800

Real Estate Firm's Address: 5331 St. Charles Rd.

Date And Time Of Inquiry: Sat. 10:30 A.M. 9/20

Real Estate Agent's Name: Donald H. Wagner

Addresses And Listing Prices Of Properties Offered For Sale:

	Address	Price
1.	1101 E. 30th Bellwood	39, 5
2.	1020 Cernan Bellwood	42, 9
3.	214 Eastern Bellwood	41, 5
4.	2632 S. 11th Broadview	45, 0
	1800 Norfolk Westchester	44, 9

Addresses And Listing Prices Of Properties Seen:

	Address	Price
1.
2.
3.
4.

Information Given To The Agent By The Auditor:

Name: John Lindsey Phone Number: 224-5512

Address: 7343 S. Prairie Ave.

Family Size: Three

Income: 20,000 Downpayment: 10,000

Present Home Sold Or Up For Sale? Yes

Credit Information (if any): None

Exhibits attached to Interrogatories

State Exactly What You Asked For When You Entered The Real Estate Office:

See below

State In A Narrative Form Your Conversation With The Real Estate Agent:

J R L to Mr. Donald H. Wagner "I'm shopping for a relatively new home in the \$35,-\$45,000 range. Mr. W. very friendly—I'm sure we can help you. Would you care to look thru the book yourself? Mr. W. most the homes in your price range will be in Bellwood. Westchester prices are higher. I believe there are over priced but that's their prices." I chose 3 from Bellwood 1 Broadview and 2 Westchester. All between 35-45,000. Mr. W.: perhaps I should call in the one in question. He did. He was told by phone it wasn't available, thus he threw it away. (the copy)

After receiving a map and some more conversation I left. There was another black male there while I was there. I waited for him nearly an hour then left.

Exhibits to Answers to Interrogatories

429-56

This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 213 S. 49th Avenue
CITY: Bellwood
CONSTR: Brick
STYLE: Tri-Level
P.O.:
BUILT: BLDR:

LOT SIZE: 40 x 135
RMS: 6 BDR: 3 BATH: 1
TAXES: \$535
SPEC. ASMT: None
HEAT: GAS FA
COOL: 2-COR
A.S.:

CODE 429-56
6-4
\$42,000

PAGES

ROOM SIZES:
LR 15 x 15
BR 11 x 13
BR 12 x 9
BR 11 x 11
BR 9 x 8
BR 10 x 12
DH

DEMT: Half
1st Living room, kitchen
2nd 2 bedrooms, bath
3rd 1 bedroom, bath

POSSESSION: 30 days a/c
REASON FOR SALE: Transfer
SCHOOL: Jefferson
MUT. AVAILABLE:
MORTGAGE:
INCLUSIONS AND PERSONAL PROPERTY:
Wall to wall carpeting thruout, excluding kitchen. Aluminum S/S/SO. Range; all window coverings.

TITLE FORM: CT & T
SHOWING INSTR. Call list

P.O.A.
☐ YES
☐ NO

OWNER: HRTZ, Robert & Carol
BUS. PHONE: 547-7572
EXCLUSIVE AGENT: CENTURY 21-MILLSIDE REALTY
SALES PERSON: CB
PHONE: 544-9180

Exhibits to Answers to Interrogatories

490-57

This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 1020 Curnan
CITY: Bellwood
CONSTR: Brick
STYLE: Tri-Level
P.O.:
BUILT: BLDR:

LOT SIZE: Approx 40 x 115
RMS: 6 BDR: 3 BATH: 1 1/2 CT
TAXES: \$650
SPEC. ASMT: To be pd by owner
HEAT: GAS FA
COOL: 2-COR
A.S.:

CODE 490-57
5-5
\$42,900

PAGES

ROOM SIZES:
LR 12 x 17
BR 11 x 11
BR 12 x 10
BR 13 x 10
BR 13 x 10
BR 11 x 10
DH

DEMT: Recreation room
1st Living room, dining room, kitchen, 1 bedroom
2nd 2 bedrooms.

POSSESSION: Immediately
REASON FOR SALE: Relocating
SCHOOL: Lincoln
MUT. AVAILABLE:
MORTGAGE:
INCLUSIONS AND PERSONAL PROPERTY: Beautifully decorated. Wall to wall carpeting in living room & dining room & 3 bedrooms. Drapes in living room & dining room. Aluminum S/S. Awning over patio in back yard. Sod & evergreens; fenced yard; aluminum downspouts & gutters. Central air conditioning & water softener.

TITLE FORM: CT & T
SHOWING INSTR. Call first

P.O.A.
☐ YES
☐ NO

OWNER: PICARDI, Charles & Phyllis
BUS. PHONE: 547-9456
EXCLUSIVE AGENT: DWAYNE REALTY
SALES PERSON: JC
PHONE: 562-4300

448-56

This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 214 .. Eastern
CITY: Bellwood
CONSTR: Brick
STYLE: Bi-Level
P.O.:
BUILT: BLDR:

LOT SIZE: Approx 40 x 145
RMS: 6 BDR: 3 BATH: 1 CT
TAXES: \$721
SPEC. ASMT: Oversized a.p. side drl
HEAT: Oil FA
COOL: 2-COR
A.S.:

CODE 448-56
6-4
\$41,500

PAGES

ROOM SIZES:
LR 19 x 12
BR 11 x 15
BR 10 x 10.6
BR 10 x 12
BR 11 x 14
Fop 21 x 16
DH

DEMT: Half + crawl
1st Living rm, Kitchen/Dining 2 bedrooms, bath family room.
2nd 1 bedroom + floored attic - Storage - Thermostatic controlled fan

POSSESSION: Mid October of to be arranged
REASON FOR SALE: Relocating
SCHOOL: St. Simeon - McKinley
MUT. AVAILABLE:
MORTGAGE:
INCLUSIONS AND PERSONAL PROPERTY: OWNER ANXIOUS - SUBMIT ALL OFFERS
Central air conditioning - many extras. Home is newly & beautifully decorated & in move-in condition. New roof on dormer. Attic has thermostatically controlled fan which helps cut heating & air conditioning bills. Wood cabinets in kitchen.
HOME HAS COUNTRY-LIKE SETTING WITH REDWOOD FENCE. Large lot & yard magnificently landscaped. Bar-B-Que Grill HOME HAS EVERYTHING SEEING A MUST

TITLE FORM: CT & T
SHOWING INSTR. Call list

P.O.A.
☐ YES
☐ NO

OWNER: CIBIC, Robert & Darlene
BUS. PHONE: 547-7346
EXCLUSIVE AGENT: DWAYNE REALTY
SALES PERSON: CS
PHONE: 562-4300

Exhibits to Answers to Interrogatories

415-57 (51)

This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 2632 S. 11th
CITY: Bensenville
CONSTR: Brick
STYLE: Tri-Level
P.D.: P
BLDG: 21 YRS w/air: Tyson

LOT: 51 x 134
RMS: 7
BED: 3
BATH: 1 CT
TAXES: 5526
SPEC. ADVT: --

HEAT: GAS FA
COOL: air
GARAGE: 2-CAR
M-41

CODE: 415-57
6-4
\$ 75,000

PAGES:
ROOM SIZES:
LN 17 x 15
BR 10 x 15
K 13 x 12.6
BA 24 x 15
DR 12 x 9.6
OR 13.6 x 9

1st: Hall - Recreation rm. Sump pump
2nd: Living room, dining room, kitchen, Den
3rd: 2 bedrooms
4th: 1 bedroom

POSITION: 60 days a/c or to be arranged
REASON FOR SALE: Smaller
SCHOOL: Lindup - St. Eulalia - Proviso East
BUS: --
MORTGAGE: --

INCLUDES AND PERSONAL PROPERTY: Wall to wall carpeting throughout. Garage has water & electric. Draperies, shades (except living room drapes). Built-in oven & range. Dryer. Double S/S sink. Modern kitchen & bath. 25 x 10 patio with canopy. Humidifier. Storage space galore. Yard with fruit trees. Immaculate home. A pleasure to show!

OWNER: PULCIANI, Tony & Lucille
BUS. PHONE: 513-6428
RES. PHONE: 513-6428
EXCLUSIVE AGENT: GLADSTONE, REALTORS-Westchester
SOLD PERSON: CH

TITLE FORM: C T & T
SHOWING INSTN: Call first
F.I.A. ☐ YES ☐ NO

486-56

This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 1800 Norfolk
CITY: Westchester
CONSTR: Brick
STYLE: Georgian
P.D.: --
BLDG: --

LOT: 50 x 125
RMS: 6
BED: 3
BATH: 1
TAXES: 780
SPEC. ADVT: None

HEAT: GAS FA
COOL: --
GARAGE: 2-CAR
A-1

CODE: 486-56
6-4
\$ 44,900

PAGES:
ROOM SIZES:
LN 15.2 x 12.8
BR 13.5 x 10.3
K 10.5 x 10.9
BA 12.8 x 9.8
DR 15.4 x 10.7
OR 10 x 12

1st: Full - paneled recreation room - utility room.
2nd: Living room, dining room, kitchen
3rd: 3 bedrooms & bath

POSITION: 30 days after closing
REASON FOR SALE: Smaller home
SCHOOL: CTA - Westtowns - 4 blks
BUS: --
MORTGAGE: --

INCLUDES AND PERSONAL PROPERTY: Wall to wall carpeting in the living room, dining room & staircase. Aluminum S/S/SD. All window coverings.

OWNER: ZAJAC, Paul
BUS. PHONE: 343-2465
RES. PHONE: 343-2465
EXCLUSIVE AGENT: CENTURY 21-HILLSIDE REALTY
SOLD PERSON: CH

TITLE FORM: C T & T
SHOWING INSTN: CALL FIRST AFTER 4 PM & WEEKENDS
F.I.A. ☐ YES ☒ NO

Exhibits to Answers to Interrogatories



Exhibits to Answers to Interrogatories

491-56 (56)

491-56	ADDRESS: 1101 S. 30th	LOT: 1/2 x 100	LIV. AREA: 6-4	CODE: 491-56
City: Bellwood	ROOMS: 6	BATHS: 3	PAVING: 1 1/2-CT	PRICE: \$39,500
CONSTR: Brick	STYL: Bi-Level	TAXES: \$780	SPEC. AGENT: N.D.E.T.	PAGES: West
REMTS: Half - recreation room, 1/2 bath, laundry room 1st Living room, dining room, kitchen, bath, bedroom 2nd 2 bedrooms				
POSSESSION: 90 days after closing or TBA REASON FOR SALE: SCHOOL: Proviso West MTSP. AVAILABLE: E1 PUS: MORTGAGE: INCLUSIONS AND PERSONAL PROPERTY: Wall to wall carpeting. All rooms except kitchen. Stove, hardwood floors, drapes & curtains throughout. Cone fireplace in recreation room; built-in sleeves. Swag lamps and 2 built-in air conditioners do not stay.				
OWNER: WAGNER, David & Linda BUS. PHONE: 547-0373 CB EXCLUSIVE AGENT: CLADSTONE, REALTORS-Berkley RES. PHONE: 544-6800 SALES PERSON: DM				

Exhibits attached to Interrogatories

ADVANCE AUDITING MATCHUPS

Name John Lindsey Address

Phone Race

Real Estate Firm To Be Visited

Address Date Of Visit Time

Personal Information Auditor Will Give To Real Estate Agent

Name Present Address

Phone Employed By

Address Business Phone

Job Description Salary

Transferred From

Number Of Children Boys Girls Ages Grade

Information Auditor Will Give Regarding Real Estate Inquiry

Price Range Of Inquiry 30,000-40,000

Number Of Bedrooms 3 Bedroom

Type Of Unit, i.e., brick, frame etc. brick—circled

Location

Amount Of Down Payment 8,000-10,000

Present Home Sold Or Up For Sale

Hintze Realty—10150 Roosevelt Road

Westchester, Ill.

Gladstone—5331 St. Charles Berkley

Exhibits attached to Interrogatories

**LEARN
REAL ESTATE
A Comprehensive 30 Hour
License Preparatory Course
Offered By
Gladstone School
of Real Estate**

EXHIBIT 4: SALES AUDIT REPORT FORMAuditor's Race **Black**Auditor's Name: **Lonnie M. Randolph**Auditor's Address: **12101 So. Emerald Chicago, Ill.**Auditor's Phone Number: **928-6556**Real Estate Firm's Name: **Gladstone Realtors**Phone Number: **544-6800**Real Estate Firm's Address: **5331 St. Charles Rd.
Berkeley, Ill. 60163**Date And Time Of Inquiry: **9/20/75 between 11:45 &
12:15**Real Estate Agent's Name: **Beverly Ricchiuto—Female**
Addresses And Listing Prices Of Properties Offered For
Sale:

	Address	Price
1.
2.
3.
4.

Addresses And Listing Prices Of Properties Seen:

	Address	Price
1.
2.
3.
4.

Exhibits attached to Interrogatories

Information Given To The Agent By The Auditor:

Name: **Lonnie M. Randolph** Phone Number: **928-6556**Address: **None**Family Size: **Four**Income: **28-35,000 (combined)** Downpayment: **10,000**Present Home Sold Or Up For Sale? **Renting with buying
option**Credit Information (if any): **None**State Exactly What You Asked For When You Entered
The Real Estate Office:Hi, my name is Lonnie Randolph and I am interested in
purchasing a home in this area.State In A Narrative Form Your Conversation With The
Real Estate Agent:I inquired about available homes in area. She introduced
herself and preceded to take out a black binder approxi-
mately 4 x 8 with listings of all available homes. She
showed me pictures and prices, whereas she preceded to
pick out some available homes for showing, while I pre-
ceded to pick out some in the other binder. Appointment
was set for 9/21 at 11 A.M. Whereupon the agent would
showed the available homes picked out to my wife and my-
self.

P.S. I think they knew I was coming.

—Had Equal Opportunity sign up.

—very friendly

—Favortism toward Bellwood.

**LEARN REAL ESTATE
A Comprehensive 30 Hour
License Preparatory Course
Offered By
GLADSTONE SCHOOL
OF REAL ESTATE**

Exhibits to Answers to Interrogatories

490-57

This information is considered accurate but we accept no liability for errors. The listing may be used without notice.

ADDRESS: 1020 Cornan
CITY: Bellwood
CONSTR: Brick
STYLE: Tri-Level
P-D: D
BUILT: 1965

LOT SIZE: Approx 40 x 115
RMS: 6
BED: 3
BATHS: 1 1/2 CT
HEAT: GAS FA
COST: \$5,300
TAXES: \$650
SPEC. ASMT: To be pd by owner
GARAGE: 2-car
A.D.:

LIV. AREA: 5-5
CODE 490-57
6-4
\$4,300

PAGES: 5

REMY: Recreation room
1ST: Living room, dining room, kitchen, 1 bedroom
2ND: 2 bedrooms.

POSSESSION: Immediately
SCHOOL: Lincoln
BUS: West Town
MORTGAGE:

REASON FOR SALE: Relocating
MTC. AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Beautifully decorated. Wall to wall carpeting in living room & dining room & 3 bedrooms. Drapes in living room & dining room. Aluminum S/S. Awning over patio in back yard. Sod & evergreens; fenced yard; aluminum downspouts & gutters. Central air conditioning & water softener.

TITLE FORM: C T & T
SHOWING INSTR: Call first

P.A. YES ☐ NO ☐

OWNER: PICARDI, Charles & Phyllis
BUS. PHONE: 547-9456
RES. PHONE: 562-4300
EXCLUSIVE AGENT: DWAYNE REALTY
SALES PERSON: JC

400-30

This information is considered accurate but we accept no liability for errors. The listing may be used without notice.

ADDRESS: 3101 St. Charles Road
CITY: Bellwood
CONSTR: Brick
STYLE: Raised Ranch
P-D: P
BUILT: 1968

LOT SIZE: 35 x 125
RMS: 5
BED: 3
BATHS: 1-3/4
HEAT: GAS FA
COST: \$43,900
TAXES: \$680.01
SPEC. ASMT: Will be paid
GARAGE: 2-car
A.D.:

LIV. AREA: 6-4
CODE 400-30
\$43,900

PAGES: 5

REMY: Full - paneled recreation room - 3/4 bath - utility room
1ST: Living rm, kitchen and dining area, 3 bedrooms & bath
2ND:

POSSESSION: 90 days or sooner
SCHOOL: McKinley - St. Simeon
BUS: West Town - 1 block
MORTGAGE: Central Fed. S/L

REASON FOR SALE:
MTC. AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: CENTRAL AIR CONDITIONED
Wall to wall carpet in living room & stairs. Curtains, drapes & shades. DRAPES IN LIVING ROOM DO NOT STAY. Built-in oven & range. BAR IN REC. ROOM DOES NOT STAY. Aluminum baked enamel soffits. S/S & S/Doors. Cyclone fenced yard.
A QUALITY BUILT HOME VERY WELL MAINTAINED Many Extras

TITLE FORM: C T & T
SHOWING INSTR: Call first

P.A. YES ☒ NO ☐

OWNER: ARISPE, Ralph V. & Theresa
BUS. PHONE: 544-8776
RES. PHONE: 314-0880
EXCLUSIVE AGENT: CENTURY 21, KATIE REALTY

Exhibits to Answers to Interrogatories

902-W6

This information is considered accurate but we accept no liability for errors. The listing may be used without notice.

ADDRESS: 235 So. 32nd Avenue
CITY: Bellwood
CONSTR: Brick
STYLE: Bi-Level
P-D: D
BUILT: 1965

LOT SIZE: 45 x 125
RMS: 7
BED: 3
BATHS: 1+
HEAT: GAS FA
COST: \$660.26
TAXES: \$250.88
SPEC. ASMT: None
GARAGE: 2-car
A.D.:

LIV. AREA: 6-4
CODE 902-W6
\$4,290.00

PAGES: 5

REMY: Recreation rm & utility rm & crawl space - storage & powder room.
1ST: Living room & dining room "L" shaped, kitchen, 1 bedroom, bath
2ND: 2 bedrooms

POSSESSION: a/c
SCHOOL: McKinley - Proviso West - St. Simeon
BUS: Northwestern
MORTGAGE: Westtown

REASON FOR SALE: Relocating
MTC. AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Wall to wall carpeting in "L" shaped living room, dining room & stairway. Built-in oven & range. Stainless steel S/S - awnings. Living room mirror does not stay.

TITLE FORM: C T & T
SHOWING INSTR: Call first

P.A. YES ☐ NO ☐

OWNER: KOWALSKI, George & Audrey
BUS. PHONE: 547-9532
RES. PHONE: 544-6800
EXCLUSIVE AGENT: GLADSTONE, REALTORS - B
SALES PERSON: BB

30-S-6

This information is considered accurate but we accept no liability for errors. The listing may be used without notice.

ADDRESS: 5935 Maple Avenue
CITY: Berkeley
CONSTR: Face Brick
STYLE: Bi-Level
P-D: P
BUILT: 1965

LOT SIZE: 80 x 125
RMS: 8+
BED: 3+
BATHS: 3/4
HEAT: GAS FA
COST: \$820
TAXES: \$820
SPEC. ASMT: None
GARAGE: 2-car
A.D.:

LIV. AREA: 6-4
CODE 30-S-6
\$69,900

PAGES: 5

REMY: 23 x 12 (Irreg) Carpeted Rec. rm, Kit. & BR
1ST: Living room, dining rm, kitchen & enclosed porch
2ND: 3 bedrooms & full ceramic bath (double vanity)
Grade level: Paneled recreation rm w/gas fireplace & bar (18 x 14), utility rm, 3/4 & 3/4 baths & office or trophy rm, 2 closets in rec. rm.

POSSESSION: 10-15-75
SCHOOL: Longfellow (lower grades) McArthur (Jr Hi) St. Domitilla, Proviso V
BUS: Westtown on Taft
MORTGAGE: Encl

REASON FOR SALE:
MTC. AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Rooms at either basement or grade recreation rm level are very suitable for in-law arrangement. Carpeting in living rm, dining rm, hall, stairways, 2 bedrooms & below grade rec. rm. All draperies & supporting fixtures on premises w/the exception of draperies in master bedroom. Dishwasher; disposal in kitchen. 2 aluminum storage sheds in back yard. Chain link fence. Aluminum storm & screens & S/S doors. (3). All inside shutters on premises. Gas Bar-B-Que in yard. Patio.

TITLE FORM: C T & T
SHOWING INSTR: Phone first
Key

P.A. YES ☐ NO ☐

OWNER: DOOLITTLE, John & Karen
BUS. PHONE: 544-0698
RES. PHONE: 345-6030
EXCLUSIVE AGENT: GOLZ REALTY
SALES PERSON:

Exhibits to Answers to Interrogatories

415-57 (62)

<p>This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.</p> <p>ADDRESS: 2632 S. 11th CITY: Broadview CONSTR: Brick STYLE: Tri-Level P.O.: P BUILT: 21 yrs ago. Tyson</p>	<p>LOT SIZE: 51 x 134 RMS: 7 BDR: 3 BATHS: 1 CT HEAT: GAS FA CENT. AIR TAXES: \$526 SPEC. ASMT: -- DAMAGE: 2-COF M.O.E.T.</p>	<p>LIV. AREA CODE: 415-57 6-4 \$45,000</p>
<p>RENT: Half - Recreation rm. Sump pump 1st Living room, dining room, kitchen, Den 2nd 2 bedrooms 3rd 1 bedroom</p>		
<p>POSSESSION: 60 days a/c or to be arranged REASON FOR SALE: Smaller SCHOOL: Lindop - St. Eulalia - Proviso East MTC: AVAILABLE: MORTGAGE: INCLUSIONS AND PERSONAL PROPERTY: Wall to wall carpeting throughout. Garage has water & electric. Draperies, shades (except living room drapes). Built-in oven & range. Dryer. Double S/S sink. Modern kitchen & bath. 25 x 10 patio with canopy. Humidifier. Storage space galore. Yard with fruit trees. Immaculate home. A pleasure to show!</p>		
<p>OWNER: PULCIANI, Tony & Lucille BUS. PHONE: 513-6428 EXCLUSIVE AGENT: GLADSTONE, REALTORS-Westchester SALES PERSON: CH PHONE: 562-6500</p>		

ROOM SIZES:
LN 17 x 15
DR 10 x 15
K 13 x 12.6
BR 24 x 15
BR 12 x 9.6
BR 13.6 x 9
O.A. 12.6 x 25.6
DEN 10 x 15

TITLE FORM: CT & T
SHOWING INSTR. Call first

P.O.A. YES NO

365-56

<p>This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.</p> <p>ADDRESS: 346 Orchard Avenue CITY: Hillside CONSTR: Face Brick STYLE: Bi-Level P.O.: P BUILT: 12 yrs. BLON: Monfelli</p>	<p>LOT SIZE: 70 x 165 RMS: 6 BDR: 3 BATHS: 1-3/4 HEAT: GAS HW CENT. AIR TAXES: \$820 SPEC. ASMT: None DAMAGE: 1-COF M.O.E.T.</p>	<p>LIV. AREA CODE: 365-56 6-4 \$55,000</p>
<p>RENT: Finished recreation room, office, laundry room, 3/4 bath 1st Living room, dining room, kitchen 2nd 3 bedrooms & full bath REDISTRIBUTED COPY</p>		
<p>POSSESSION: Immediate a/c REASON FOR SALE: Apartment SCHOOL: Hillside - Proviso West HS MTC: AVAILABLE: MORTGAGE: INCLUSIONS AND PERSONAL PROPERTY: Outside lights on timer. Radiant heat on first level. 2 air conditioners. Built-in oven/range, exhaust hood in kitchen. Carpeting in living room, dining room, hall & stairs. Aluminum doors & screens. Thermopane windows thruout. Large tool shed. Cedar fence. Dishwasher. Drapes & curtains in living room, dining room, kitchen, 1 bedroom & recreation rm. Timer controlled exhaust fan.</p>		
<p>OWNER: DE SANTIS, Albert J. & Inne F. BUS. PHONE: 544-1057 EXCLUSIVE AGENT: GULZ REALTY SALES PERSON: M PHONE: 345-6030</p>		

ROOM SIZES:
LN 18 x 13
DR 10.6 x 12
K 12.6 x 11.6
BR 15.6 x 11.6
BR 13 x 10
BR 11 x 10
PM 17 x 11
DEN

TITLE FORM: CT & T
SHOWING INSTR. Call first

P.O.A. YES NO

Exhibits to Answers to Interrogatories

155-WS (6-3)

<p>This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.</p> <p>ADDRESS: 1628 Highridge CITY: Westchester CONSTR: Brick STYLE: Ranch P.O.: P BUILT: 1957 BLON: Melvin</p>	<p>LOT SIZE: 54 x 125 RMS: 5 BDR: 2 BATHS: 1 HEAT: GAS FA CENT. AIR TAXES: \$708 SPEC. ASMT: DAMAGE: 2-COF M.O.E.T.</p>	<p>LIV. AREA CODE: 155-WS 6-4 \$48,900</p>
<p>RENT: Full - Recreation room with bar 1st Living room, dining room, kitchen, 2 bedrooms, bath 2nd</p>		
<p>POSSESSION: To be arranged REASON FOR SALE: Moving to Florida SCHOOL: Highridge, Divine Providence, Proviso West - Triton MTC: AVAILABLE: MORTGAGE: INCLUSIONS AND PERSONAL PROPERTY: Central air conditioning. Patio in yard. Awnings. Wall to wall carpeting in living room, dining room & one bedroom. All drapes, curtains & shutters. Aluminum soffits, gutters & fascia. Aluminum storms & screens. Range in kitchen & basement. Color TV antenna. Home is in excellent condition inside & out. Hanging shelf in living room does not stay.</p>		
<p>OWNER: NICKEL, William F., Frances BUS. PHONE: 562-5640 EXCLUSIVE AGENT: DWAYNE REALTY SALES PERSON: PK PHONE: 562-4300</p>		

ROOM SIZES:
LN 20 x 12
DR 10 x 9
K 10.6 x 13.9
BR 13.6 x 11.3
BR 10 x 11.3

TITLE FORM: CT & T
SHOWING INSTR. Always call

458-57

<p>This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.</p> <p>ADDRESS: 2413 S. 22nd Avenue CITY: Broadview CONSTR: Brick STYLE: Tri-Level P.O.: P BUILT: 1954 BLON: Tyson</p>	<p>LOT SIZE: 50 x 125 RMS: 6 BDR: 3 BATHS: 1-3/4 HEAT: GAS FA CENT. AIR TAXES: \$690 SPEC. ASMT: None DAMAGE: 1-COF M.O.E.T.</p>	<p>LIV. AREA CODE: 458-57 5-5 \$45,000</p>
<p>RENT: Finished with recreation room 3/4 bath 1st Living room, kitchen, family room 2nd 2 bedrooms & bath 3rd 1 bedroom with built-ins</p>		
<p>POSSESSION: To be arranged REASON FOR SALE: Relocating SCHOOL: Lindop MTC: AVAILABLE: MORTGAGE: INCLUSIONS AND PERSONAL PROPERTY: All carpeting and window treatments. Gas grill; stereo speakers in basement. 5 year old addition. Fenced yard. Cedar lined closet in master bedroom. Carpeted patio. Natural woodwork. Awnings. NO FHA OR VA</p>		
<p>OWNER: JACOBSEN (BONKOWSKI) Frances R. BUS. PHONE: 344-0070 EXCLUSIVE AGENT: GLADSTONE, REALTORS-Westchester SALES PERSON: M PHONE: 562-6500</p>		

ROOM SIZES:
LN 14.8 x 16
DR 12 x 13
K 14.6 x 10
BR 13 x 9
BR 25.6 x 10
BR 10 x 25

TITLE FORM: CT & T
SHOWING INSTR. Call business before 5 PM to show

P.O.A. YES NO

*Exhibits attached to Interrogatories***EXHIBIT 4****SALES AUDIT REPORT FORM**

Auditor's Race: Black

Auditor's Name: Lonnie M. Randolph

Auditor's Address: 12101 So. Emerald, Chicago, Ill.

Auditor's Phone Number: 928-6556

Real Estate Firm's Name: Gladstone, Realtors

Phone Number: 562-6500

Real Estate Firm's Address: 10401 W. Cermak Rd.,
Westchester, Ill.

Date and Time of Inquiry: 1:30 P.M. (1 hr.) 9/20/75

Real Estate Agent's Name: Ted Wolnik

Addresses and Listing Prices of Properties for Sale:

	<i>Address</i>	<i>Price</i>
1.	Enclosed	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....

Addresses and Listings of Properties Seen:

	<i>Address</i>	<i>Price</i>
1.
2.
3.
4.

Information Given to the Agent by the Auditor:

Name: Lonnie M. Randolph Phone Number: 928-6556

Address: 12101 So. Emerald

Family Size: 4

Income: — Downpayment: 8-10,000

Present Home Sold Or Up For Sale? Rent-Buying Option

Credit Information (if any): —

*Exhibits attached to Interrogatories*State Exactly What You Asked For When You Entered
The Real Estate Office:Hi! My name is Lonnie M. Randolph and I am in-
terested in buying a home.State In A Narrative Form Your Conversation With The
Real Estate Agent:

Agent ask my name, address and where I would be in-
terested in buying. I reply that I am unfamiliar with area,
so show me what you have. He proceeded to show me
several locations in Bellwood. When I inquired about Hill-
side, he negated question by saying that price was higher
in Hillside and not as ideal location as Bellwood. When I
mention that price was no problem, he still proceeded to
show me only Bellwood homes listed in black binder, from
which I picked out 3 or 4 homes and he picked out the
remainder of 7 in all as possibilities. These of which I
narrowed down to 4. Appointment was schedule for
Tuesday at 7 P.M. to bring wife to look at homes.

No sign up for Equal Housing.

— Took Direct Control of Discussion

—Lead Discussion All the Way

—Favortism Toward Bellwood

—Had Files on Villa Park and

—Also Had Document Files (14 Cabinets in All)

P.S. Also tried to sell me 6 flat apt. in Bellwood.

Exhibits to Answers to Interrogatories

458-56

1001 St. Charles Road
Bellwood
Brick
Raised Ranch
P.D. 1958 Bldg. Sunrise

LOT SIZE: 35 x 125
RMS: 5
BED: 3
BATH: 1-3/4
HEAT: GAS FA
COST: \$43,900
TAXES: \$680.01
SPEC. ASMT: Will be paid
GARAGE: 2-CAR
SIDE DRIVE

ROOM SIZES:
LR 16 x 18
DR 10 x 24.6
BR 12 x 11.3
BR 12 x 9.6
BR 10 x 9.6

POSSESSION: 90 days or sooner
REASON FOR SALE: SCHOOL: McKinley - St. Simeon
MORTGAGE: West Towns - 1 block
MORTGAGE: Central Fed. 5/L

INCLUSIONS AND PERSONAL PROPERTY: CENTRAL AIR CONDITIONED
Wall to wall carpet in living room & stairs. Curtains, drapes & shades.
DRAPE IN LIVING ROOM DO NOT STAY. Built-in oven & range. BAR IN REC.
ROOM DOES NOT STAY. Aluminum baked enamel soffits. 5/5 & 5/Doors.
Cyclone fenced yard.

A QUALITY BUILT HOME VERY WELL MAINTAINED Many Extras

OWNER: [REDACTED] BUS. PHONE: [REDACTED] RES. PHONE: [REDACTED]
EXCLUSIVE AGENT: [REDACTED] PHONE: [REDACTED]
SALES PERSON: [REDACTED]

TITLE FORM: CT & T
SHOWING INSTR. Call first

P.L.A. ☒ YES ☐ NO

Exhibits to Answers to Interrogatories

363-56

1005 Bellwood Avenue
Bellwood
Brick
6 Flat
P.D. 1958 Bldg. Sunrise

LOT SIZE: 50 x 125
RMS: 6
BED: 3
BATH: 1-3/4
HEAT: GAS FA
COST: \$43,900
TAXES: \$2,290
SPEC. ASMT: None
GARAGE: 2-CAR
SIDE DRIVE

ROOM SIZES:
LR 16 x 18
DR 10 x 24.6
BR 12 x 11.3
BR 12 x 9.6
BR 10 x 9.6

POSSESSION: 90 days or sooner
REASON FOR SALE: SCHOOL: McKinley - St. Simeon
MORTGAGE: West Towns - 1 block
MORTGAGE: Central Fed. 5/L

INCLUSIONS AND PERSONAL PROPERTY: CENTRAL AIR CONDITIONED
Wall to wall carpet in living room & stairs. Curtains, drapes & shades.
DRAPE IN LIVING ROOM DO NOT STAY. Built-in oven & range. BAR IN REC.
ROOM DOES NOT STAY. Aluminum baked enamel soffits. 5/5 & 5/Doors.
Cyclone fenced yard.

A QUALITY BUILT HOME VERY WELL MAINTAINED Many Extras

OWNER: [REDACTED] BUS. PHONE: [REDACTED] RES. PHONE: [REDACTED]
EXCLUSIVE AGENT: [REDACTED] PHONE: [REDACTED]
SALES PERSON: [REDACTED]

TITLE FORM: CT & T
SHOWING INSTR. Call first

P.L.A. ☒ YES ☐ NO

423-56

221 Zuelke Drive
Bellwood
Brick
Raised Ranch
P.D. 1958 Bldg. Sunrise

LOT SIZE: 40 x 100
RMS: 6
BED: 3
BATH: 1 CT-3/4
HEAT: GAS FA
COST: \$42,500
TAXES: \$652
SPEC. ASMT: Seller will pay
GARAGE: 2-CAR
SIDE DRIVE

ROOM SIZES:
LR 18 x 16
DR 24 x 10
BR 12.3 x 11.4
BR 12.3 x 9.9
BR 10.6 x 9.8
BR 12.5 x 11.6
BR 22 x 14

POSSESSION: December 2 or sooner
REASON FOR SALE: Bought
SCHOOL: McKinley - St. Simeon - Proviso West
MORTGAGE: West Towns

INCLUSIONS AND PERSONAL PROPERTY: CENTRAL AIR CONDITIONED
Aluminum storms & screens & doors. Built-in oven & range. Formica kitchen cabinets. All curtains & drapes & shades except in kitchen. All rods (no sheers). Carpeting in living room & hall. Water softener.

Very good in-law arrangement
NO FHA or VA

OWNER: [REDACTED] BUS. PHONE: [REDACTED] RES. PHONE: [REDACTED]
EXCLUSIVE AGENT: [REDACTED] PHONE: [REDACTED]
SALES PERSON: [REDACTED]

TITLE FORM: CT & T
SHOWING INSTR. Call first

P.L.A. ☒ YES ☐ NO

[illegible]

Credit Information (if any): none

Exhibits attached to Interrogatories

**State Exactly What You Asked For When You Entered
The Real Estate Office:**

3 bedroom, brick, between \$35-45,000.

State In A Narrative Form Your Conversion With The Real Estate Agent:

Salesman said there are some areas of Bellwood he did not want to show us because they were bad areas. When asked why they were bad, he said they were integrated.

When the home at 238 Zulke Drive was picked out he said that this was a integrated area. He went on to show us pictures of homes at 343-32nd and 235-32nd and said that these were good homes but also in an integrated area.

He then showed us a picture of a home at 346-31st. He said that he liked the home but he could not guarantee what the area would be like in a year or two.

After we were shown two homes we returned to the office. We again looked at the book.

We picked out a house at 1010 Cernan, the salesman looked at his map of Bellwood and then said this area is kind of nice.

I asked what kind of nice meant. He said that I must not have been following what he has been saying. He showed us the Bellwood map and pointed out the Zulke Drive area and where he had been showing me homes, he pointed to the western side of Bellwood on the map and said these are the better areas I would be shown. During this conversation the salesman said again the Zulke Drive area was integrated and the area around Cernan Drive was still alright but he would show us homes west of there.

Exhibits to Answers to Interrogatories

619-W/		(11)					
1916 Information is considered accurate but we accept no liability for errors. This may be a slight error.		ADDRESS: 2958 Buckingham CITY: Westchester COUNTY: Brick & Cedar STYLE: Colonial P.O. #: BUILT: 1967 BLDG: Kell		LOT SIZE: CORNER 55 x 134 HWS: 8+ BDR: 4+ BATH: 2 1/2 FARR: \$1124 SPEC. ADVT: None		LIV. AREA HEAT: GAS FA COIT: GARAGE: 2-CAR A.M.	
COOP: 939-W/ 6-4 74,000							
NAME: Full 1st Living rm, dining rm, kitchen/dinette, 1 bedroom, 1/2 bath, utility room and 4 bedrooms, full bath & 3/4 bath						ROOM SIZES: LR 17 x 15 DR 11.6 x 10.6 BR 22 x 10 x 14 BR 14 x 15 BR 13 x 12 BR 11 x 13 BR 11 x 14 BR 10 x 10 D.A.	
POSSESSION: To be arranged SCHOOL: M.R. MORTGAGE: \$35,000 Harris Bank INCLUSION AND EXCLUSION: Wall to wall carpeting in ALL ROOMS. Drapes in living room & dining room & curtains & shutters in kitchen. Kitchen stove; dishwasher & garbage disposal. CENTRAL AIR CONDITIONING. Alum. S/S. Electric eye garage opener. Beautiful wood cabinets in kitchen.		REASON FOR SALE: Relocating BUS: AVAILABLE:				TITLE FORM: C & T SHOWING INSTR: Call first	
OWNER: DIROKAS, Robert R. & Penelope M. EXCLUSIVE AGENT: WM. E. COREY REALTY SALE PERSON:		BUS. PHONE: 562-9212 RES. PHONE:		CB			

Location: 1213-1211 DEGENER				6-3-7		1213-60 x 185		134,900.-	
Showroom: WESTDALE GARDENS, ILL.				Brooks and Description		1213-60 x 185		10,000-L	
	Price	1st Level	2nd Level	Size, Details, Descriptions and Notes					
Bedsrms	3			12 x 11 12 x 10 9 x 9					
Other Rooms									
Porch(es)				Front 100					
Dining Room	1			21 x 12					
Kitchen	1			COMBINED WITH BATHROOM NEW NO. OAK FLOOR-WOOD CABINETS-STAINLESS STEEL DOUBLE SINK					
Bath	1			WALLS BR					
Floors	HARDWOOD			HSPROVISO					
Schools	Grade	HILLSIDE JMS		HSPROVISO					
Churches				Not					
Mortgage Rating				Available					
Remarks: EXTRA LARGE LOT WITH 5 FRUIT TREES 2 CHERRY, 2 PLUM, 1 APPLE, GRAPE VINES BLACKBERRY & CURRENT BUSHES. IDEAL TRAFFIC PATTERN.									

(Correct) Note: This lot inc. The listing may be changed without notice. Broker's fee is one-half of net sale price or \$1,000.00, whichever is less.

*Exhibits attached to Interrogatories***EXHIBIT 4****SALES AUDIT REPORT FORM**Auditor's Race: **Caucasian**Auditor's Names: **Charles Elliott & Kathleen Nichols**Auditor's Address: **3211 Jackson, 928 Bellwood**Auditor's Phone Number: **544-2803 547-0081**Real Estate Firm's Name: **Gladstone**Phone Number: **544-6800**Real Estate Firm's Address: **5331 St. Charles Rd. in
Berkeley 60163**Date and Time of Inquiry: **9-30-75, 7:30 P.M.**Real Estate Agent's Name: **James D. Doebling**Addresses and Listing Prices of Properties Offered for
Sale:

<i>Address</i>	<i>Price</i>
1. (Georgian) Westchester	\$44,900
("sold" when he called)	
2. (Ranch) Berkeley	\$42,900
3. (Ranch) Hillside	\$49,900
4. (Georgian) Hillside	\$44,000
(seller did not want to show house—had company)	

Addresses and Listing Prices of Properties Seen:

<i>Address</i>	<i>Price</i>
1.
2.
3.
4.

Information Given to the Agent by the Auditor:

Name: **Mr. & Mrs. Chuck Elliott** Phone Number **982-6000**Address: **Apartment in Skokie**Family Size: **2 children: 1 boy—4 years old, 1 girl—4½***Exhibits attached to Interrogatories*Income: **\$16,000**Downpayment: **\$10,000**Present Home Sold Or Up For Sale? **renting in Skokie**Credit Information (if any): **not asked**State Exactly What You Asked For When You Entered
The Real Estate Office:

3 bedroom brick home in the area. Price range \$38-\$42,000

* We did not mention any particular suburb.*

State In A Narrative Form Your Conversation With The
Real Estate Agent:

Mr. Doebling stated that "he couldn't put us in Westchester*" but that his "prime trade" was Berkeley and Hillside homes and he gave us the book but pointed out several listings in Berkeley and Hillside. He was really pushing on one for \$49,900 in Hillside. Chuck asked why houses were more expensive in Westchester and he said that there was a large Bohemian population there that had "migrated" from Cicero and Berwyn and that Westchester was a step up from there and that the next step up economically from Westchester was Oakbrook. The broker asked us to come back on Saturday so we could see houses in daylight. During our period of the listings, the broker left the room a few times and said there was a meeting in progress that he had to check on. The explanation offered was that the home market was "tight" and the sales staff were soliciting listings by telephone. He didn't say where. He also had trouble getting an open telephone line to call the selling parties.

*Exhibits attached to Interrogatories***EXHIBIT 4****SALES AUDIT REPORT CHECK**

Auditor's Race: White

Auditor's Name: Charles Elliott & Vicki Simmons

Auditor's Address: 3211 Jackson St.—4004 Warren Ave—
Bellwood 60104

Auditor's Phone Number: 544-2803 & 544-4375

Real Estate Firm's Name: Gladstone Realtors

Phone Number: 562-6500

Real Estate Firm's Address: 10401 W. Cermak Rd.,
Westchester, Ill.

Date and Time of Inquiry: 9/14/75—approx 12:45 P.M.

Real Estate Agent's Name: Robert J. Casey

Addresses and Listing Prices of Properties Offered for
Sale:

	<i>Address</i>	<i>Price</i>
1.	515 S. 46th, Bellwood	\$39,500
2.	.....	.....
3.	2632 S. 11th, Broadview	\$45,000
4.	.....	.....

Addresses and Listing Prices of Properties Seen:

1.	515 S. 46th, Bellwood	\$39,500
2.	2632 S. 11th, Broadview	\$45,000
3.	.....	.....
4.	.....	.....

Information Given to the Agent by the Auditor:

Name: Mr. and Mrs. Charles Elliott

Phone Number: 982-6000—ext. 6678 (Work)

Address: 4901 Old Orchard Rd., Skokie, Ill.

Family Size: 2 pre school children

Income: Not Discussed Downpayment: \$10,000

Present Home Sold Or Up For Sale? Rent

Credit Information (if any): None—Work at Brunswick
Corp.—Skokie*Exhibits attached to Interrogatories*State Exactly What You Asked For When You Entered
The Real Estate Office:We stated that I was being transferred to Oakbrook
and was looking for a home in high 30's to low 40's. Only
preference was brick home with 3 bedrooms.State In A Narrative Form Your Conversation With The
Real Estate Agent:Mr. Casey began by saying he was flipping thru pages
of sales book, passing over homes in integrated neighbor-
hoods. He said he didn't know how we felt, he really
didn't care. We made no comment. He then said he
would show us houses only west, asking us what we thought
of La Grange Park. We said we didn't know area that
well.He then showed us two listings of homes in West Bell-
wood on south 46th & 47th Avenue. We indicated interest
in the home at 515 S. 46th in Bellwood. He then gave us
two listing books, one set up by town & one by price range.
We picked out a home in Broadview at 2632 S. 11th. He
called Mr. Lingrem, the owner of the home at 515 S. 46th
in Bellwood. He taped this phone conversation and played
it back for us. He said the tape recording would be used
for training salesmen. He then called the owner of the
home at 2632 11th, but nobody was home. He said we'd
take a ride to both houses.We were shown the home at 515 S. 46th but we told him
we didn't like it that much. On the way to the home in
Broadview, I asked Mr. Casey if there were homes in the
lower 30's. Mr. Casey stated that there were, but these
homes were not appreciating in value, and if you buy such
a home, when you're ready to sell you'll get 15 or \$20,000.I asked him if we could get Broadview home down in
price and he said we have good bargaining power with
our \$10,000 downpayment.*Charles Elliott*

Exhibits to Answers to Interrogatories

with 5
... money
2632 S 11th
515-57
294-515

415-57

This information is considered con- fidential and we ac- cept no liability for errors. The listing may be changed without notice.	ADDRESS: 2632 S. 11th	LOT SIZE: 51 x 134	LIV. AREA	CODE 415-57
	CITY: Broadview	NO. BTD. BATHS	HEAT. GAS FA	6-4
	CONSTR: Brick	7 3 1 CT	CENT. AIR	
	STYLE: Tri-Level	TAXES: 5526	SPEC. AGENT: --	GARAGE: 2-CAR
	P.O. P	BUILT: 21 yrs ago: Tyson		

1st: Half - Recreation rm. Sump pump
 1st: Living room, dining room, kitchen, Den
 2nd: 2 bedrooms
 3rd: 1 bedroom

POSSESSION: 60 days a/c or to be arranged
 SCHOOL: Lindop - St. Eulalia - Proviso East
 BUS: MORTGAGE:

INCLUSIONS AND PERSONAL PROPERTY: Wall to wall carpeting throughout. Garage has
 water & electric. Draperies, shades (except living room drapes). Built-in
 oven & range. Dryer. Double S/S sink. Modern kitchen & bath. 25 x 10
 patio with canopy. Humidifier. Storage space galore. Yard with fruit
 trees. Immaculate home. A pleasure to show!

OWNER: PULCIANI, Tony & Lucille BUS. PHONE: F13-6428 CB
 EXCLUSIVE AGENT: GLADSTONE, REALTORS-Westchester PHONE: 562-6500
 SALES PERSON: CH

ROOM SIZES:
 LR 17 x 15
 DR 10 x 15
 K 13 x 12.6
 BR 24 x 15
 BR 12 x 9.6
 BR 13.6 x 9
 O.A. 12.6 x 25.6
 DEN 10 x 15

TITLE FORM:
 C T & T
 SHOWING INSTR.
 Call first

P.I.A.
☐ YES
☐ NO

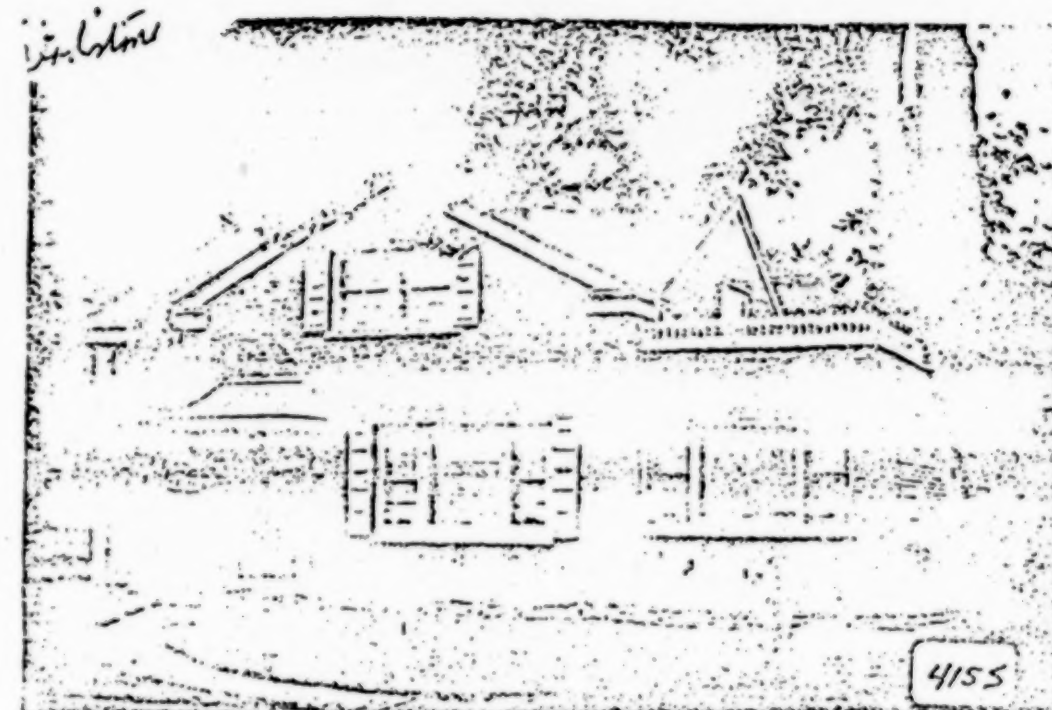
Exhibits to Answers to Interrogatories

Robert J. Casey
Sales Manager
Residence Phone: 562-5183



Gladstone, Realtors

16401 W. Cermak Road / Westchester, Illinois / 562-6500



Defendants' Motion for Summary Judgment

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT
(Filed July 6, 1976)

Defendants move pursuant to Rule 56(b) of the Federal Rules of Civil Procedure for a summary judgment on the following alternative grounds:

- (1) Plaintiffs have no actionable claim or standing to sue under the provisions of 42 U.S.C. § 3612 and 42 U.S.C. § 1982.
- (2) There is no case or controversy between the parties within the meaning of Article III of the Constitution.
- (3) The "prudential limitations" on the exercise of federal jurisdiction require that plaintiffs not be afforded standing to prosecute this case.

In support of this motion defendants rely on certain of plaintiffs' answers to interrogatories and responses to requests for admission. (Copies of the pertinent Interrogatory Answers and Responses to Request for Admission are attached as Exhibit A to this motion.)

Russell J. Hoover
Russell J. Hoover
One of the Attorneys
for Defendants

JENNER & BLOCK—
One IBM Plaza
Chicago, Illinois 60611
222-9350

Exhibit A to Motion for Summary Judgment

EXHIBIT A

The following are those portions of plaintiffs' Answers to Interrogatories and Response to Request for Admissions on which defendants rely to support their motion for summary judgment:

Requests For Admissions

A1. None of the individual plaintiffs who had conversations with the defendants had the intention at the time of said conversations of purchasing a home.

Answer: Admit.

A2. None of the individual plaintiffs who had conversations with the defendants informed the defendants that they were conducting an audit on behalf of the Leadership Council For Metropolitan Open Communities.

Answer: Admit.

A3. None of the individual plaintiffs has had any conversation or business contact with defendant Ted Wolnik.

Answer: Admit.

A4. None of the individual plaintiffs has had any conversation or business contact with defendant Beverly Richiuto.

Answer: Admit.

Answers to Interrogatories

I2. With respect to the allegations contained in paragraph 8 of the Complaint:

(a) Identify each act and/or communication of each defendant which you contend is evidence of an effort on his part to (influence the choice of prospective homebuyers on the basis of race.)

Answer: The acts of Defendants which allegedly violate 42 U.S.C. § 1982 and 42 U.S.C. § 3601 et seq. are the subject matter of the audit reports.

1) With respect to Plaintiff Edward Powell, See Appendix A.

Exhibit A to Motion for Summary Judgment

2) With respect to Plaintiff Mary P. Powell, See Appendix A.

3) With respect to Plaintiff Charles Elliott, See Appendix A.

4) With respect to Plaintiff Vicki Simmons, See Appendix A.

5) With respect to Plaintiff Joyce Perry, See Appendix A.

6) With respect to Plaintiff, Sandra J. Sharp, See Appendix A.

(b) Identify each act and/or communication of each defendant which you contend is evidence of his discouraging prospective black homebuyers from purchasing homes in white areas on the basis of race.

Answer: See answer to I2(a).

(c) Identify each act and/or communication of each defendant which you contend is evidence of his engaging in unlawful racial steering in violation of 42 U.S.C. § 1982 and 41 (sic.) U.S. § 3604.

Answer: See answer to I2(a).

(d) Identify each homebuyer who you contend used or sought to use the services of Gladstone Realtor and whose choice was influenced on the basis of race.

Answer: The plaintiff auditors were acting in the capacity of homebuyers. See Appendix A.

(e) Identify each homebuyer who used or sought to use the services of Gladstone Realtor who was discouraged from purchasing a home on the basis of race.

Answer: See answer to I2(d).

I6. With respect to each oral conversation between or among each plaintiff, or anyone purporting to act on his (their) behalf, and each defendant, or anyone purporting to act on his (their) behalf, from January 1, 1975 to the present time:

Exhibit A to Motion for Summary Judgment

(a) Identify the parties to the conversation.

Answer: See Appendix A.

(b) State the date of the conversation.

Answer: See Appendix A.

(c) State the location of the conversation and identify all persons present.

Answer: See Appendix A.

(d) If the conversation was by phone, state who called whom.

Answer: See Appendix A.

(e) State what was said by each party to the conversation or, if unable to do so, state the substance of what was said by each party to the conversation and indicate that it is the substance rather than the exact words that is being reported.

Answer: See narratives in audit reports, Appendix A. The individual plaintiffs have from time to time conversed with each other, however, the substance and dates of those conversations are not specifically available, but are embodied in Appendix A.

I7. Do plaintiffs contend that each of the defendants discouraged prospective black homebuyers from purchasing homes in white areas on the basis of race?

Answer: Yes, the individual plaintiffs in this matter were auditors acting in the capacity of homebuyers.

(a) If the answer is yes, with respect to each defendant identify the black homebuyer and state the date of the discouragement.

Answer: See Appendix A.

(b) If the answer is no, identify those defendants as to whom you claim such activity and with respect to each identify the black homebuyer and state the date of the discouragement.

Answer: Not applicable.

Motion for Leave to File Reply Brief

PROOF OF MAILING

I, Margrett Kontek on oath state that I served a copy of the foregoing Defendants' Motion For Summary Judgment by placing same in the envelope addressed to F. Willis Caruso, Esq., 470 S. Dearborn, Suite 1360, Chicago, Illinois 60605 ATTN. Horace Fox, Esq., with proper, pre-paid postage affixed thereto and by depositing same in the United States Government mail chute at One IBM Plaza, Chicago, Illinois on Tuesday, July 6, 1976 before the hour of 5:00 p.m.

Margrett Kontek

SUBSCRIBED AND SWORN to
before me this 6th day
of July, 1976.
Mary Oskroba
Notary Public
(Notary Seal)

Order and Memorandum Opinion

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title Omitted in printing.)

ORDER
(Filed September 23, 1976.)

Memorandum opinion filed. Defendants' motion for summary judgment is granted and the cause is ordered dismissed.

/s/ *Bernard M. Decker*
Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

MEMORANDUM OPINION
(Filed September 23, 1976.)

The instant complaint alleges that the defendants, a real estate business and its salespersons and agents, engaged in the illegal practice of racial steering. This consists of efforts to influence the choice of prospective homebuyers on the basis of race by discouraging prospective black homebuyers from purchasing homes in predominantly white areas. The action is based upon Title VIII, the Fair Housing Act of 1968, 42 U.S.C. §3601 *et seq.*, and upon 42 U.S.C. §1982, the Civil Rights Act of 1866.

There are several plaintiffs. The six individual plaintiffs include four white residents of Bellwood, Illinois, and two blacks, one a resident of Bellwood, the other a resident of Maywood, Illinois. These plaintiffs were investigators who audited the defendant for compliance with

Memorandum Opinion

the civil rights statutes. In the process of this investigation, several of the plaintiffs¹ acted as testers, individuals who posed as prospective homebuyers in order to ascertain the practices of the realtor. They assert that they "have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society" by means of defendants' challenged practices. The remaining plaintiffs are Leadership Council for Metropolitan Open Communities, a not-for-profit corporation charged with combatting housing discrimination, and the Village of Bellwood, a municipal corporation located in Cook County. The Leadership Council asserts that the challenged practices interfere with its work and purpose, and that it has been forced to expend sums "to provide an audit and other efforts to eliminate such unlawful acts." The Village of Bellwood complains that it "has been injured by having the housing market in (Bellwood) wrongfully and illegally manipulated to the economic and social detriment of the citizens of (Bellwood)."

Federal jurisdiction has been invoked in this case under 42 U.S.C. §3612 and 28 U.S.C. §§1343(4) and 2201. The defendants have moved for summary judgment.

The evidence before the court reveals that the plaintiffs lack standing to bring this action either under the 1866 Civil Rights Act or under 42 U.S.C. §3612. The plaintiffs have asserted that the acts which constitute the evidence of the alleged racial steering are those described in the audit reports. The instant case therefore does not involve

¹ Several of the testers seemingly were not plaintiffs, and the parties' briefs make it uncertain whether all of the plaintiffs were in fact testers. In any case it is nowhere claimed that any of the plaintiffs were in reality prospective homebuyers.

Memorandum Opinion

racial steering directed at actual home seekers. As a consequence, the plaintiffs can only claim to have suffered indirect injury from the actions of the defendants.

The factual circumstances and the legal issues of this case closely resemble the recently decided case of *Topic v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976). That action was also based upon 42 U.S.C. §1982 and upon the Fair Housing Act of 1968 by utilizing the jurisdiction provisions of 42 U.S.C. §3612. The plaintiffs included an unincorporated civil rights organization and three individual members. Using investigatory tactics similar to those employed by the Leadership Council in the instant case, Topic sent out housing testers to examine the business practices of real estate brokers in Torrance and Carson, California. The plaintiffs found evidence of racial steering; however, none "were actual homeseekers subjected to racial steering", 532 F.2d at 1274. The injuries complained of by the plaintiffs were substantially identical to those found in the instant complaint, with the obvious exception that the municipalities involved did not join in the *Topic* suit.

The district court determined that the §1982 claim should be dismissed,² and on interlocutory appeal, the Ninth Circuit held that the plaintiffs likewise lacked standing to bring an action under §3612 because that section "does not authorize lawsuits to vindicate the rights of third parties." 532 F.2d at 1275.

² The district court actually noted in a footnote that the plaintiffs could not prosecute a §1982 claim, but omitted the dismissal of that count in its order. The Ninth Circuit treated that as an oversight, and expressly affirmed the dismissal of the §1982 claim. 532 F.2d 1274 fn. 4.

Memorandum Opinion

The *Topic* suit, like the present case, asserted a violation of the substantive provisions of 42 U.S.C. §3604,³ which guarantees the right not to be discriminated against in the sale or rental of housing. The Ninth Circuit asserted that a cause of action under §3612 exists only for "the direct victims" of a practice proscribed by §3604. The plaintiffs in *Topic* were held not to be "direct victims".

³ Section 3604 provides:

"As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

"(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

"(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

"(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

"(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

"(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin."

Memorandum Opinion

The plaintiffs in the present case do not challenge the statutory construction reached by the Ninth Circuit.⁴ Their efforts to factually distinguish themselves from the *Topic* plaintiffs are halfhearted and unpersuasive. The inclusion of the municipality in the instant action does not alter the indirect nature of the grievances since Bellwood is challenging in *parens patriae* fashion actions to the detriment of its citizens.⁵

The legal complexities in *Topic* and the instant case arise from the fact that the Fair Housing Act contains two jurisdictional provisions §3610 and §3612. The former requires the performance of certain preliminary procedures before redress may be sought in federal court. These include the filing of a complaint with the Secretary of Housing and Urban Development. The Secretary is given time to investigate and to attempt an administrative resolution of the dispute. He is directed to give local authorities the first opportunity to resolve the controversy in the event

⁴ The plaintiffs do cite *Bell Realty v. Chicago Commission on Human Relations*, 130 Ill.App.2d 1072 (1st Dist. 1971), for the principle that minority testers have a cause of action if they are denied housing opportunities available to whites. However, that case in fact dealt with a license suspension under a Chicago ordinance. The question of standing under the Fair Housing Act was not even remotely at issue in that case, and the testers were in fact not parties to the proceeding.

On the other hand, the court notes that indirect victims of steering were seemingly allowed to proceed with an action under §3612 in *Zuch v. Hussey*, 394 F.Supp. 1028 (E.D.Mich. 1975). The *Zuch* court however did not consider the standing issue, and the well-reasoned *Topic* opinion is the only Court of Appeals decision dealing with this question.

⁵ The court does not reach the challenge raised by defendants to the standing of a municipal corporation under the Fair Housing Act.

Memorandum Opinion

that equivalent procedures are available under state or local law. Thirty days are set aside for conciliation efforts, and the action can be brought in federal district court only in the absence of substantially equivalent state law remedies. By contrast, §3612 provides immediate access to a federal forum without any such preconditions.

The Ninth Circuit carefully analyzed the relationship between these two jurisdictional sections, and determined that Congress intended that the "preferential access to judicial processes" found in §3612 be limited to "those individuals who are the primary victims of the illegal acts of discrimination." 532 F.2d at 1276. The Supreme Court has expansively defined the class of individuals with sufficient standing to bring an action under §3610. *Trafficante v. Metropolitan Life Ins.*, 409 U.S. 205 (1972). The Ninth Circuit properly notes that the procedural prerequisites of §3610 would become meaningless if both it and §3612 had identical standing requirements. The court considered that the conciliation processes of §3610 were particularly needed and appropriate in situations where there was no direct injury and "a delay in plaintiffs' access to court would not significantly worsen plaintiffs' injuries, if at all." 532 F.2d at 1276. To hold to the contrary would render meaningless the statutory pattern and create "a potential excess of litigation" by providing immediate access to federal court for both direct and indirect grievants.

The plaintiffs argue that their situation is more analogous to that found in *Trafficante*. But the Supreme Court only found the existence of standing under §3610; this action is based upon §3612 and upon a §1982 claim.⁶

⁶ The fact that the Supreme Court addressed the question of standing solely in the context of §3610 underscores the Ninth Circuit's conclusion that the standing requirements of §3612 may be more restricted.

Motion to Reconsider

Trafficante had originally been brought under both 42 U.S.C. §§3610 and 3612 and under 42 U.S.C. §1982. 446 F.2d 1158, 1161 (9th Cir. 1971). The Ninth Circuit held that the plaintiffs lacked standing under the Fair Housing Act provisions and under §1982. In reversing that decision, the Supreme Court expressly did not consider that part of the holding dealing with standing under §1982. 409 U.S. 205 at 208, fn. 8. Thus *Trafficante*, rather than supporting plaintiffs' claim under the 1866 Act, in fact argues against their contention. And both the district court and the Ninth Circuit seemingly agreed in *Topic* that an indirect injury was not protected by §1982.

Inasmuch as the court concludes that the plaintiffs lack standing to present their claim either under the 1866 Act or under the jurisdictional provisions of §3612, the motion for summary judgment in behalf of the defendants should be and hereby is granted and the cause is dismissed.

ENTER:

Bernard M. Decker

United States District Judge

DATED: September 23, 1976.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

MOTION TO RECONSIDER
(Filed October 4, 1976.)

Now comes Plaintiffs, Village of Bellwood, The Leadership Council For Metropolitan Open Communities, Edward Powell, Mary Powell, Charles Elliott, Vicki Simmons, Sandra Sharp and Joyce Perry by their attorneys, F. Willis Caruso, Horace Fox and Marie V. Sanon and respectfully

Motion to Reconsider

requests this honorable Court to reconsider its Dismissal Order in this action heretofore entered on September 23, 1976.

In support of this motion, plaintiffs state as follows:

1. Plaintiffs did and do challenge the *Topic* decisions' statutory construction. However, an alternative theory was also presented, to wit; if the Court felt bound by *Topic*, the instant case was distinguishable.

2. Plaintiffs disagree with the proposition that the legislative history of 42 U.S.C. §3610 and §3612 delineates a different standing requirement for §3612 than it does for §3610.

3. Notwithstanding the fact that the Court in *Zuch v. Hussey*, 394 F.Supp. 1028 (E.D. Mich. 1975) did not specifically consider the standing issue in that racial steering case, those plaintiffs were allowed to proceed under 42 U.S.C. §3612.

4. We believe the municipality has standing in its own right or in a representative capacity to maintain this suit. *Warth* 43 L.W. 4912.

/s/ *Horace Fox, Jr.*

One of the Attorneys for Plaintiffs

Horace Fox, Jr.
Marie V. Sanon
F. Willis Caruso
407 So. Dearborn St.
Suite 1360
Chicago, IL 60605
341-9345

Notice of Appeal

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

NOTICE OF APPEAL
(Filed October 21, 1976.)

Notice is hereby given that Village of Bellwood, et al., Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the Memorandum Order entered in this action on the 23rd day of September, 1976.

/s/ *F. Willis Caruso*

/s/ *Horace Fox, Jr.*

One of the Attorneys for the Plaintiffs

Horace Fox, Jr.
F. Willis Caruso
Marie V. Sanon
407 South Dearborn Street
Suite 1360
Chicago, Illinois 60605
341-9345

Notice of Filing

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

NOTICE OF FILING

To: Russ Hoover, Esq.

Jenner & Block
One IBM Plaza
Chicago, Illinois

Please Take Notice that on the 21st day of October, 1976, we filed with the Clerk of the United States District Court for the Northern District of Illinois the Notice of Appeal, a copy of which is herewith served upon you.

/s/ *Horace Fox, Jr.*

One of the Attorneys for the Plaintiffs

Horace Fox, Jr.
F. Willis Caruso
Marie V. Sanon
407 South Dearborn Street
Suite 1360
Chicago, Illinois
351-9345

State of Illinois
County of Cook—SS.

AFFIDAVIT OF SERVICE

Oneida McCullough, hereby states that she served the foregoing Notice of Appeal upon attorney for defendants, Russ Hoover, Jenner & Block, One IBM Plaza, Chicago, Illinois, by mailing a copy thereof by first class, pre-paid mail to said attorney on this 21st day of October, 1976.

/s/ *Oneida McCullough*

Subscribed to and sworn before me
this 21st day of October, 1976.

Marie Sanon
Notary Public

Order Denying Motion for Reconsideration

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

ORDER

(Filed November 5, 1976.)

The plaintiffs have moved for reconsideration of this court's order granting summary judgment in behalf of the defendants on the grounds that they lack standing to present their claim under the statutes utilized. The court feels that *Topic v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976), is dispositive of this case and cannot be factually distinguished. The inclusion of the municipality as a plaintiff does not alter the indirect nature of the injury asserted in the complaint. *Topic* offers a compelling construction of the statutory pattern, and deals with an issue not previously decided in this circuit. While the plaintiffs are free to attempt to persuade the Seventh Circuit to disagree with the view expressed in *Topic*, the court finds no basis for altering its previous opinion. Accordingly, the motion to reconsider is hereby denied.

/s/ *Bernard M. Decker*

Judge

Relevant Docket Entries

RELEVANT DOCKET ENTRIES

- 10-24-75 Filed Complaint and four copies. JS-5
- 10-31-75 Filed plaintiffs' interrogatories.
- 10-31-75 Filed plaintiffs' request for production of documents to be inspected and copied. ws
- 11-25-75 Filed defendants' motion for leave to file appearance, jury demand, motion to dismiss and affidavit evidencing compliance with Rule 39
- 2-11-76 Filed defendants' discovery request (first wave)
T
- 3- 9-76 Enter order dated March 8, 1976: Order plaintiff to answer defendants interrogatories on or before April 2, 1976 and defendant is given an extension of time until April 20, 1976 to answer or otherwise plead. PERRY, DJ
Mailed notices 3/9/76 fd'a
- 4- 2-76 Filed plaintiffs' notice of filing, with answers to defendants' first set of interrogatories, with exhibits attached. fd'a
- 7- 8-76 Filed defendants' motion for summary judgment.
- 9-30-76 Enter order dated September 29, 1976: This cause comes on upon defendants' motion for summary judgment. The court has read and considered said motion and the memoranda of the respective parties in support thereof and in opposition thereto and finds that said motion is well taken and should be granted for the reasons set forth in Judge Decker's thorough and scholarly memorandum opinion entered September 23, 1976

Relevant Docket Entries

in *Village of Bellwood etc., et al. v. Gladstone Realtors, et al.*, case no. 75 C 3587, which opinion this court hereby adopts as its own. The court notes that the complaint in the *aforecited* case is almost a verbatim duplicate of the complaint in the instant case, except of course for the names of the defendants, and that plaintiffs' brief in opposition to defendants' motion for summary judgment in the *aforecited* case is likewise, almost a verbatim duplicate of their brief in opposition to the instant motion for summary judgment, again except for the names of the defendants. Accordingly, it is Ordered that defendants' motion for summary judgment be and it hereby is granted, and that summary judgment be and is hereby entered in favor of each defendant herein and against plaintiffs herein, with costs to be assessed against the plaintiffs.—Perry, J.

Mailed notices 9-30-76 JS-6 T

10-26-76 Enter order dated October 21, 1976: Enter order—plaintiff's motion to reconsider dismissal order of September 29, 1976 is hereby denied—

Perry, J.

Mailed notices 10-26-76 T

10-21-76 Filed plaintiffs' motion to reconsider T

10-26-76 Filed Notice of filing of Notice of appeal.

10-26-76 Filed Notice of Appeal by Village of Bellwood, The Leadership Council for Metropolitan Open Communities, Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp and Joyce Perry, Plaintiffs from order of 9-29-76 \$5.00 pd

Complaint

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

COMPLAINT

(Filed October 24, 1975)

Now Come the Plaintiffs, Village of Bellwood, a municipal corporation of the State of Illinois, The Leadership Council for Metropolitan Open Communities, a not-for-profit corporation of the State of Illinois, Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp, and Joyce Perry, by their attorneys F. Willis Caruso and David J. Parsons, and complains of Defendants Robert A. Hintze Realtor, R. J. Tillman, Stephen F. Eggerding G.R.I., Robert A. Hintze, as follows:

1. This action arises under 42 U.S.C. §1982 and 42 U.S.C. §§3601 et seq. Jurisdiction is conferred on this court by 28 U.S.C. §1343(4) and §2201, and 42 U.S.C. §3612.

2. Plaintiff, Village of Bellwood, is a municipal corporation of Illinois located in the County of Cook.

3. Plaintiff, The Leadership Council for Metropolitan Open Communities, is an Illinois not-for-profit corporation charged with providing for equal opportunity in housing and the elimination of discrimination in housing in the six-county metropolitan area.

4. Plaintiffs, Sandra T. Sharp and Joyce Perry are and were at all times relevant hereto black citizens of the United States of America who reside in Cook County, Illinois.

5. Plaintiffs, Edward B. Powell, Mary P. Powell, Charles Elliott and Vicki Simmons, are and were at all times relevant hereto white citizens of the United States of America who reside in Cook County, Illinois.

Complaint

6. Defendant, Robert A. Hintze Realtor, is an Illinois real estate business with an office at 10150 Roosevelt Road, Westchester, in the County of Cook and the State of Illinois.

7. Defendant, Stephen F. Eggerding, is a licensed real estate broker, State license No.: 75-066793, of Defendant Robert A. Hintze Realtor.

8. Upon information and belief Defendant, R. J. Tillman, is a real estate salesperson and agent for Defendant Robert A. Hintze Realtor.

8a. Defendant, Robert A. Hintze, is a licensed real estate broker, State license No. 75-050740.

9. On or about September 15, 1975 and prior thereto and continuing to the date thereof, Defendants, Robert A. Hintze Realtor, Robert A. Hintze, R. J. Tillman, Stephen F. Eggerding G.R.I., undertook efforts to influence the choice of prospective black homebuyers from purchasing homes in white areas on the basis of race, thereby engaging in unlawful racial steering in violation of 42 U.S.C. §1982 and 41 U.S.C. §3604 in an area described as follows: An area bound on the North by the Northwestern Railroad, on the East by Beltline Railroad, on the South by the Eisenhower Expressway and on the West by Mannheim Road. The homebuyers who were affected are those in the above area; and those who used or sought to use the services of Defendant, Robert A. Hintze Realtor and may have been so influenced or discouraged based on race.

10. In doing the acts complained of, Defendants acted intentionally and maliciously and were guilty of wilful and wanton disregard of the rights of the Plaintiffs.

11. Such acts and practices complained of hamper and interfere with the work and purpose of the Plaintiff, The Leadership Council for Metropolitan Open Communities

Complaint

and cost The Leadership Council for Metropolitan Open Communities money to provide an audit and other efforts to eliminate such unlawful acts.

12. Plaintiff, Village of Bellwood, has been injured by having the housing market in such village wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village.

13. The individual Plaintiffs have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society.

14. Plaintiffs have no adequate remedy at law, or otherwise, for the harm done by Defendants, and Plaintiffs are suffering great and irreparable loss and will continue to suffer great and irreparable loss unless the acts and conduct of Defendants are enjoined.

Wherefore Plaintiffs pray:

(1) That the Court declare individual plaintiffs cannot be denied the right to inspect, negotiate for purchase of, and/or purchase homes on the basis of race;

(2) That the Court issue an injunction permanently restraining the enjoining Defendants from illegal racial steering, and enjoining Defendants from any efforts to illegally influence the choice of prospective homebuyers from purchasing homes in particular areas because of race, and/or from encouraging prospective homebuyers to purchase a home in particular areas based on race;

(3) That the Court grant actual damages of One Hundred Thousand Dollars (\$100,000.00) and Fifty Thousand Dollars (\$50,000.00) exemplary and/or punitive damages each to the Village of Bellwood and The Leadership Council for Metropolitan Open Communities;

Plaintiffs' Interrogatories

(4) That the Court grant actual damages and exemplary and/or punitive damages of Five Thousand Dollars (\$5,000.00) each to Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp and Joyce Perry;

(5) That the Court grant reasonable attorney's fees and costs and such other relief as the Court may deem just and proper.

F. Willis Caruso
Attorney for Plaintiffs

F. Willis Caruso
407 So. Dearborn St.
Suite 1360
Chicago, Illinois 60605
(312) 341-9345

David J. Parson
Seyfarth, Shaw, Fairweather
& Geraldson
55 East Monroe
42nd Floor
Chicago, Illinois 60603
(312) 346-8000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)
PLAINTIFFS' INTERROGATORIES
(Filed October 31, 1975)

Now Come Plaintiffs, by their attorneys, and propound the following interrogatories to be answered under oath by the defendants individually.

Plaintiffs' Interrogatories

1. State your full name. With respect to the corporate defendant, state the nature of the business entity, the date founded, all predecessors and successors and assigns. State the name and authority of the person answering for the corporate defendant.

2. State the names and addresses of all other persons having knowledge or information of the matters and incidents described in the Complaint filed in this case. State whether any statements were obtained from any of these persons by you, your agents, or your attorneys, the name and address of each such person, and the date of such statement; if so, attach a copy of each such written statement.

F. Willis Caruso
by *B. Beeson*
Attorney for the Plaintiffs

F. Willis Caruso
407 So. Dearborn Street
Suite 1360
Chicago, Illinois 60605
(312) 341-9345

David J. Parsons
Seyfarth, Shaw, Fairweather
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Chicago, Illinois 60603
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Request for Production of Documents

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

REQUEST FOR PRODUCTION OF DOCUMENTS
TO BE INSPECTED AND COPIED
(Filed Oct. 31, 1975)

Plaintiffs, by their attorney, pursuant to Rule 34 of the Federal Rules of Civil Procedure request Defendant Robert A. Hintze Realtor to produce designated documents as described below at 2:00 p.m. on the 19th day of November, 1975 at the offices of Robert A. Hintze Realtor, 10150 Roosevelt Road, Westchester, Illinois.

At which time the Plaintiffs, said attorney, and persons acting on their behalf shall be allowed to inspect and copy documents described as follows:

1. All listings of residential real estate either listed exclusively with Robert A. Hintze Realtor or available to said defendant for sale through multiple listing or otherwise from October 1, 1974 through October 25, 1975.
2. All office documents relating to residential real estate available for sale including, but not limited to, lists, memoranda, reports, reports of listed properties, sale reports and the like from October 1, 1974 through October 25, 1975.
3. All documents relating to names, addresses and telephone numbers of prospects for purchase of residential property, talked to, contacted and/or interviewed by sales personnel of Defendant Corporation, including, but not limited to, prospect cards, notes, memoranda, telephone prospects sheets or cards, call-back lists, reports of show-

Request for Production of Documents

ings, reports of prospects, prospect books and the like from October 1, 1974 through October 25, 1975.

4. All documents showing the addresses of all residential real estate shown and/or offered to the prospects revealed by the documents requested in 3 above.

5. All newspaper ads and other advertisements for all properties listed for sale including ads for individual homes as well as display ads from October 1, 1974 through October 25, 1975.

6. All records and documents showing contracts entered into and sales consummated by the Defendant Corporation and its predecessor from October 1, 1974 through October 25, 1975 including, but not limited to all documents showing:

- a) the address of properties sold;
- b) address of Defendant Corporation's office consummating said sale;
- c) name or names of salespersons consummating said sale for Defendant Corporation;
- d) names of salespersons sharing in or paid a commission for said sale;
- e) whether any of the above sales were as a result of referrals from other real estate entities;
- f) names, addresses and race of the persons purchasing said properties;
- g) the immediate prior address of the persons purchasing said properties; and

Request for Production of Documents

- h) names, race and present address of the sellers of said properties.

F. Willis Caruso
by *B. Beeson*
Attorney for Plaintiffs

F. Willis Caruso
407 So. Dearborn Street
Suite 1360
Chicago, Illinois 60605
(312) 341-9345

David J. Parsons
Seyfarth, Shaw, Fairweather
& Geraldson
55 E. Monroe
42nd Floor
Chicago, Illinois 60603
(312) 346-8000

CERTIFICATE OF SERVICE

Rachael Davis, being duly sworn on oath deposes and states that she mailed the foregoing Plaintiffs' Interrogatories, Plaintiffs' Request For Production Of Documents To Be Inspected And Copied, as well as Notice of Filing, to Robert A. Hintze, 10110 Roosevelt Road, Westchester, Illinois, by depositing true and correct copies of same in the United States mailbox at 407 So. Dearborn, Chicago, Illinois 60605, this 31st day of October, 1975, at or before the hour of 5:00 p.m.

Rachael Davis
Rachael Davis

Subscribed to and sworn before
me this 31st day of October, 1975.

Della Brunson

NOTARY PUBLIC

My Commission expires

Oct. 19, 1979

(Notary Seal)

Defendants' Discovery Request

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

DEFENDANTS' DISCOVERY REQUEST

(First Wave)

(Filed February 11, 1974.)

As their first wave discovery request in this case, defendants submit the following Interrogatories, Request to Produce and Request to Admit to plaintiffs.

INTERROGATORIES**II. With respect to each plaintiff,**

(a) State his full name and each other name by which he has been known since age 18.

(b) State his present home address and each other address at which he has resided since age 18, indicating the dates of each such residence.

(c) State his home telephone number.

(d) State his social security number.

(e) Identify his present employer and each other employer since age 18.

(f) Identify each officer, director and principal managing agent of plaintiff The Leadership Council for Metropolitan Open Communities and with respect to each officer and principal managing agent describe his duties in that capacity.

(g) Identify each official or agent of plaintiff Village of Bellwood who has authorized the bringing of this suit on its behalf.

(h) Identify each official and agent of the Village of Bellwood who has knowledge of the injury alleged in paragraph 11 of the Complaint.

Defendants' Discovery Request

(i) Identify each officer and agent of plaintiff The Leadership Council who has knowledge of the money expended by said plaintiff to provide the audit and other efforts referred to in paragraph 10 of the Complaint.

(j) Identify the officer or agent of plaintiff The Leadership Council who is best able to testify to the types of records maintained and to the record keeping and filing procedures of said party.

(k) If any of the plaintiffs are members of a Block Club, identify the Block Club and each officer, principal managing agent and spokesperson therefor.

(l) If any of the individual plaintiffs is or has been a party to a lawsuit (other than the instant case) or a defendant in a criminal case, state with respect to each such plaintiff the full caption of the case (including case number, court and all parties) and give a brief description of the nature of the case.

(m) If any of the plaintiffs has ever testified either in deposition or at trial in a suit in which The Leadership Council for Metropolitan Open Communities was a party, identify the suit in I2(1) above and state the date of such testimony.

I2. With respect to the allegations contained in paragraph 9 of the Complaint:

(a) Identify each act and/or communication of each defendant which you contend is evidence of an effort on his part to influence the choice of prospective homebuyers on the basis of race.

(b) Identify each act and/or communication of each defendant which you contend is evidence of his discouraging prospective black homebuyers from purchasing homes in white areas on the basis of race.

Defendants' Discovery Request

(c) Identify each act and/or communication of each defendant which you contend is evidence of his engaging in unlawful racial steering in violation of 42 U.S.C. § 1982 and 42 U.S.C. § 3604.

(d) Identify each homebuyer who you contend used or sought to use the services of Robert A. Hintze Realtor and whose choice was influenced on the basis of race.

(e) Identify each homebuyer who used or sought to use the services of Robert A. Hintze Realtor who was discouraged from purchasing a home on the basis of race.

I3. Identify each person whom plaintiffs expect to call as an expert witness at trial and with respect to each:

(a) State the subject matter on which the expert is expected to testify.

(b) State the substance of the facts and opinions to which the expert is expected to testify.

(c) State a summary of the grounds for each said opinion.

(d) State the title of the case, case number, court and date(s) on which said expert has testified (either at trial or in deposition) on behalf of any plaintiff herein or on the same subject matter as his expected testimony herein.

I4. With respect to the allegations contained in paragraph 11 of the Complaint:

(a) State the amount of money expended by The Leadership Council to provide an audit.

(b) Identify the recipients of all said moneys.

I5. Do you contend that the Village of Bellwood has expended money as a result of any of defendants' activities which are complained of in the Complaint herein?

Defendants' Discovery Request

(a) If the answer is yes, state the amount of money so expended by the Village of Bellwood.

(b) Identify the recipients of all said moneys.

I6. With respect to each oral conversation between or among each plaintiff, or anyone purporting to act on his (their) behalf, and each defendant, or anyone purporting to act on his (their) behalf, from January 1, 1975 to the present time:

(a) Identify the parties to the conversation.

(b) State the date of the conversation.

(c) State the location of the conversation and identify all persons present.

(d) If the conversation was by phone, state who called whom.

(e) State what was said by each party to the conversation or, if unable to do so, state the substance of what was said by each party to the conversation and indicate that it is the substance rather than the exact words that is being reported.

I7. Do plaintiffs contend that each of the defendants discouraged prospective black homebuyers from purchasing homes in white areas on the basis of race?

(a) If the answer is yes, with respect to each defendant identify the black homebuyer and state the date of the discouragement.

(b) If the answer is no, identify those defendants as to whom you claim such activity and with respect to each identify the black homebuyer and state the date of the discouragement.

I8. Have plaintiffs withheld any documents called for in the Request to Produce submitted herewith because of a claim of privilege or work product? If the answer is yes, state with regard to each such document:

(a) The date of the document.

Defendants' Discovery Request

(b) The nature of the document (e.g. letter, memorandum, tape recording, etc.).

(c) The author of the document.

(d) The subject matter of the document.

(e) The length of the document.

(f) The addressee of the document.

(g) Identify all persons known to plaintiffs to have seen the document or a copy thereof.

(h) The nature of the privilege or work product claim.

I9. Identify each person not heretofore identified in response to Interrogatory No. 1 through Interrogatory No. 7, both inclusive, who have knowledge of any fact upon which the Complaint herein is based and with respect to each such person state the substance of the facts as to which he has knowledge.

REQUEST TO PRODUCE

Pursuant to Rule 34 of the Federal Rules of Civil Procedure plaintiffs are requested to produce for inspection and copying by attorneys for defendants the following designated documents. The production is to be made in the law offices of Jenner & Block, 43rd Floor, One IBM Plaza, Chicago, Illinois 60611 commencing at 10:00 a.m., March 1, 1976:

R1. Each document which relates or refers to or which is evidence of each act and communication identified by plaintiffs in response to interrogatory I2, including without limitation each document to which they used to refresh their recollection in verifying the answer to interrogatory I2.

R2. The curriculum vitae for each expert witness named in response to interrogatory I3.

R3. Each previous deposition transcript and previous transcript of trial testimony of each expert witness identified in the answer to interrogatory I3.

Defendants' Discovery Request

R4. Each document which refers or relates to or which is evidence of the amount of money and recipients of said money stated in response to interrogatory I4, including without limitation each document to which plaintiffs referred to which they used to refresh their recollection in verifying the answer to interrogatory I4.

R5. Each document which refers or relates to or which is evidence of the amount of money and recipients of said money stated in response to interrogatory I5, including without limitation each document to which plaintiffs referred or which they used to refresh their recollection in verifying the answer to interrogatory I5.

R6. Each document which relates or refers to, which is evidence of, or which purports to summarize, either wholly or in part, each conversation identified in response to interrogatory I6.

R7. Each document which relates or refers to or which is evidence of each fact stated in response to interrogatory I7, including without limitation each document to which plaintiffs referred or which they used to refresh their recollection in verifying the answer to interrogatory I7.

R8. Each document which refers or relates to or which is the product of the audit referred to in paragraph 10 of the Complaint.

R9. Each document which was produced by or received by plaintiffs, and each of them, from January 1, 1975 to the present time which refers to each and any of the following:

- (a) R. J. Tillman
- (b) Stephen F. Eggerding
- (c) Robert A. Hintze
- (d) Complaints of racial steering by Robert A. Hintze Realtors.

Defendants' Discovery Request

R10. Each document which contains instructions to the testers to conduct an audit concerning defendants.

R11. Each document which purports to summarize or collate the results of the audit concerning defendants.

R12. Each document sent to each defendant by each plaintiff (with the exception of the Village of Bellwood) and each document received by each plaintiff (with the exception of the Village of Bellwood) from each defendant from January 1, 1975 to the present time.

R13. Each document which purports to instruct the testers in the procedure to be followed in conducting an audit.

R14. Each document which plaintiffs contend constitutes evidence of the economic and social detriment suffered by the citizens of the Village of Bellwood as a result of defendants' conduct.

R15. Each document which plaintiffs intend to introduce in evidence at the trial of this case and each document which plaintiffs intend to use to refresh the recollections of witnesses whom they intend to call in this case.

REQUESTS FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure plaintiffs are requested to admit the truth of the following matters:

A1. None of the individual plaintiffs who had conversations with the defendants had the intention at the time of said conversations of purchasing a home.

A2. None of the individual plaintiffs who had conversations with the defendants informed the defendants that they were conducting an audit on behalf of The Leadership Council for Metropolitan Open Communities.

DEFINITIONS

As used in this discovery request the following words and phrases are defined as shown below:

Defendants' Discovery Request

1. "Document" means any writing, drawing, graph, chart, photograph, tape recording, wire recording, computer print-out and other data compilation from which information can be obtained, translated, if necessary, by plaintiffs through detection devices into reasonably usable form.

2. "Identify" when referring to an employer means the business name, address and phone number of the entity for whom plaintiff works or worked and the name and last known address of plaintiff's immediate supervisor on said job.

3. "Identify" when referring to a person means his full name and last known address, telephone number, business affiliation and job title.

4. "Identify" when referring to an act means to describe the act, state the date of the act, name the actor and identify all known witnesses to the act.

5. "Identify" when referring to a communication means to state the date and content of the oral communication identifying all parties and witnesses to the oral communication and stating what was said by each and means to state the date, author and type of document of a written communication.

6. When used herein the masculine gender of pronouns is meant to include the feminine gender as well and singular nouns are meant to include the plural as well.

/s/ *Russell J. Hoover*

Russell J. Hoover

One of the Attorneys for Defendants

Jonathan T. Howe
Russell J. Hoover
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
222-9350
Attorneys for Defendants

Notice of Filing

PROOF OF SERVICE

Margrett Kontek on oath states that she served a copy of the foregoing Defendants' Discovery Request (First Wave) in case No. 75 C 3589 by placing same in an envelope addressed to F. Willis Caruso, Esq., 407 South Dearborn Street, Suite 1360, Chicago, Illinois 60605, with proper, prepaid postage affixed thereto and by placing same in the United States Government mail chute at One IBM Plaza, Chicago, Illinois on Monday, February 2, 1976 before the hour of 4:00 p.m.

/s/ *Margrett Kontek*

Subscribed And Sworn to
before me this 2nd day of
February, 1976.

/s/ *Virginia Blaski*

Notary Public

(Seal)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

NOTICE OF FILING
(Filed April 2, 1976.)

To: Johnathan T. Howe
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

Please Take Notice that on the 2nd day of April, 1976, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Answers to Defen-

Answers to Interrogatories

dants' First Set of Interrogatories, copies of which are herewith served upon you.

/s/ *F. W. Caruso (by H. Fox)*

F. Willis Caruso

Attorney for Plaintiffs

F. Willis Caruso

Marie V. Sanon

407 So. Dearborn

Chicago, IL 60605

341-9345

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

ANSWERS TO DEFENDANTS' FIRST SET
OF INTERROGATORIES

Pursuant to the Federal Rules of Civil Procedure, Rule 33, Plaintiffs, Village of Bellwood, a municipal corporation of the State of Illinois, The Leadership Council For Metropolitan Open Communities, a not-for-profit corporation of Illinois, Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra J. Sharp and Joyce Perry, hereby answers the interrogatories propounded by Defendants, as follows:

II. With respect to each plaintiff,

(a) State his full name and each other name by which he has been since age 18.

Answer: See Appendix A*.

(b) State his present home address and each other address at which he has resided since age 18, indicating the dates of each such residence.

Answer: See Appendix A*

Answers to Interrogatories

(c) State his home telephone number.

Answer: See Appendix A*

(d) State his social security number.

Answer: See Appendix A*

(e) Identify his present employer and each other employer since age 18.

Answer: See Appendix A*

(f) Identify each officer, director and principal managing agent of plaintiff The Leadership Council For Metropolitan Open Communities and with respect to each officer and principal managing agent describe his duties in that capacity.

Answer: See Appendix B, Kale Williams, Executive Director of the Leadership Council, 407 So. Dearborn St., Suite 1360, Chicago, Illinois, 60605. Thomas G. Ayers, Chairman, Frederick G. Jaicks, President, and Edwin C. Berry, Vice President.

(g) Identify each official or agent of plaintiff Village of Bellwood who has authorized the bringing of this suit on its behalf.

Answer: See Appendix E

(h) Identify each official and agent of the Village of Bellwood who has knowledge of the injury alleged in paragraph 11 of the Complaint.

Answer: See Appendix E

(i) Identify each officer and agent of plaintiff The Leadership Council who has knowledge of the money expended by said plaintiff to provide the audit and other efforts referred to in paragraph 10 of the Complaint.

Answer: Kale Williams, Executive Director, 407 So. Dearborn, Suite 1360, Chicago, Illinois 60605.

(j) Identify the officer or agent of plaintiff The Leadership Council who is best able to testify to the types of rec-

Answers to Interrogatories

ords maintained and to the record keeping and filing procedures of said party.

Answer: Kale Williams, Executive Director, 407 So. Dearborn, Suite 1360, Chicago, Illinois 60605.

(k) If any of the plaintiffs are members of a Block Club, identify the Block Club and each officer, principal managing agent and spokesperson thereof.

Answer: See Appendix A*

(1) If any of the individual plaintiffs is or has been a party to a lawsuit (other than the instant case) or a defendant in a criminal case, state with respect to each such plaintiff the full caption of the case (including case number, court and all parties) and give a brief description of the nature of the case.

Answer: *Objection:* Irrelevant, immaterial, not discoverable. However, plaintiffs state that they have suffered no criminal conviction other than minor traffic convictions. See Appendix A*.

(m) If any of the plaintiffs has ever testified either in deposition or at trial in a suit in which The Leadership Council for Metropolitan Open Communities was a party, identify the suit as in I2(1) above and state the date of such testimony.

Answer: Not Applicable.

I2. With respect to the allegations contained in paragraph 8 of the Complaint:

(a) Identify each act and/or communication of each defendant which you contend is evidence of an effort on his part to influence the choice of prospective homebuyers on the basis of race.

Answer: The acts of Defendants which allegedly violate 42 U.S.C. §1982 and 42 U.S.C. §3601 et seq. are the subject matter of the audit reports.

1) With respect to Plaintiff Edward Powell, See Appendix A.

Answers to Interrogatories

2) With respect to Plaintiff Mary P. Powell, See Appendix A.

3) With respect to Plaintiff Charles Elliott, See Appendix A.

4) With respect to Plaintiff Vicki Simmons, See Appendix A.

5) With respect to Plaintiff Joyce Perry, See Appendix A.

6) With respect to Plaintiff Sandra J. Sharp, See Appendix A.

(b) Identify each act and/or communication of each defendant which you contend is evidence of his discouraging prospective black homebuyers from purchasing homes in white areas on the basis of race.

Answer: See answer to I2(a).

(c) Identify each act and/or communication of each defendant which you contend is evidence of his engaging in unlawful racial steering in violation of 42 U.S.C. §1982 and 41 (sic.) U.S. §3604.

Answer: See answer to I2(a).

(d) Identify each homebuyer who you contend used or sought to use the services of Hintze Realtors and whose choice was influenced on the basis of race.

Answer: The plaintiff auditors were acting in the capacity of homebuyers. See Appendix A.

(e) Identify each homebuyer who used or sought to use the services of Hintze Realtors who was discouraged from purchasing a home on the basis of race.

Answer: See answer to I2(d).

13. Identify each person whom plaintiffs expect to call as an expert witness at trial and with respect to each:

(a) State the substance of the facts and opinions to which the expert is expected to testify.

Answer: Pierre DeVise; Demographics.

Answers to Interrogatories

(b) State the substance of the facts and opinions to which the expert is expected to testify.

Answer: See Appendix D.

(c) State a summary of the grounds for each said opinion.

Answer: See Appendix D.

(d) State the title of the case, case number, court and date(s) on which said expert has testified (either at trial or in deposition) on behalf of said plaintiff herein or on the same subject matter as his expected testimony herein.

Answer: *Metropolitan Housing Development Corporation vs. Arlington Heights*, 517 F. 2d 409 (7th Circuit Court of Appeals).

I4. With respect to the allegations contained in paragraph 10 of the Complaint:

(a) State the amount of money expended by the Leadership Council to provide an audit.

Answer: \$375.00

(b) Identify the recipients of all said moneys.

Answer: John Woltjen, 407 S. Dearborn, Suite 1360, Chicago, Illinois 60605.

I5. Do you contend that the Village of Bellwood has expended money as a result of any of defendants' activities which are complained of in the Complaint herein?

Answer: No

(a) If the answer is yes, state the amount of money so expended by the Village of Bellwood.

Answer: Not Applicable.

(b) Identify the recipients of all said moneys.

Answer: Not Applicable.

I6. With respect to each oral conversation between or among each plaintiff, or anyone purporting to act on his (their) behalf, and each defendant, or anyone purporting

Answers to Interrogatories

to act on his (their) behalf, from January 1, 1975 to the present time:

(a) Identify the parties to the conversation.

Answer: See Appendix A.

(b) State the date of the conversation.

Answer: See Appendix A.

(c) State the location of the conversation and identify all persons present.

Answer: See Appendix A.

(d) If the conversation was by phone, state who called whom.

Answer: See Appendix A.

(e) State what was said by each party to the conversation or, if unable to do so, state the substance of what was said by each party to the conversation and indicate that it is the substance rather than the exact words that is being reported.

Answer: See narratives in audit reports, Appendix A. The individual plaintiffs have from time to time conversed with each other, however, the substance and dates of those conversations are not specifically available, but are embodied in Appendix A.

I7. Do plaintiffs contend that each of the defendants discouraged prospective black homebuyers from purchasing homes in white areas on the basis of race?

Answer: Yes, the individual plaintiffs in this matter were auditors acting in the capacity of homebuyers.

(a) If the answer is yes, with respect to each defendant identify the black homebuyer and state the date of the discouragement.

Answer: See Appendix A.

(b) If the answer is no, identify those defendants as to whom you claim such activity and with respect to each

Answers to Interrogatories

identify the black homebuyer and state the date of the discouragement.

Answer: Not Applicable.

18. Have plaintiffs withheld any documents called for in the Request to Produce submitted herewith because of a claim of privilege or work product? If the answer is yes, state with regard to each such document:

Answer: No.

(a) The date of the document.

Answer: Not Applicable.

(b) The nature of the document (e.g. letter, memorandum, tape recording, etc.).

Answer: Not Applicable.

(c) The author of the document.

Answer: Not Applicable.

(d) The subject matter of the document.

Answer: Not Applicable.

(e) The length of the document.

Answer: Not Applicable.

(f) The addressee of the document.

Answer: Not Applicable.

(g) Identify all persons known to plaintiffs to have seen the document or a copy thereof.

Answer: Not Applicable.

(h) The nature of the privilege or work product claim.

Answer: Not Applicable.

19. Identify each person not heretofore identified in response to Interrogatory No. 1 through Interrogatory No. 7, both inclusive who have knowledge of any fact upon which the Complaint herein is based and with respect to each such person state the substance of the facts as to which he has knowledge.

Answers to Interrogatories

Answer: John Lindsey conducted an audit, See Appendix A. Kathleen Nicholes conducted an audit, See Appendix A. Sandra Sharp is a plaintiff who resides in Bellwood, who has read the answers to interrogatories.

REQUESTS FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure plaintiffs admit the truth of the following matters:

A1. None of the individual plaintiffs who had conversations with the defendants had the intention at the time of said conversations of purchasing a home.

Answer: Admit

A2. None of the individual plaintiffs who had conversations with the defendants informed the defendants that they were conducting an audit on behalf of The Leadership Council for Metropolitan Open Communities.

Answer: Admit

Appendix A*

Vicki Simmons

4004 Warren Ave.

Bellwood, IL

544-4375

SS#—336-40-9073

Previous Address—

7340 Wrightwood, Elmwood Park

2137 So. Nagle, Chicago, IL

Mary P. Powell (Mary P. Puricelli)

111 30th Ave.

Bellwood, IL

544-7691

SS#—320-42-5915

Previous Address—

2115 25th Ave., Broadview, IL—6/69-2/71

17 Ashbel, Hillside, IL—1948-6/69

Answers to Interrogatories

Charles L. Elliott
 3211 Jackson
 Bellwood, IL—1967-Present
 544-2803
 SS#—349-32-4252
 Previous Address—
 4210 N. Kimball, Chicago, IL—1954-1963
 4108-6 Melrose—1963-1967
 Kathleen Nichols
 928 Bellwood
 Bellwood, IL
 544-0081
 SS#—Refused to Release
 Previous Address—
 5229 W. Race—1952-1969
 2402 N. New England, Chicago—1969-1974
 John Lindsey
 7343 Prairie
 Chicago, IL—1974-Present
 224-5512
 SS#—353-30-0044
 Previous Address—
 2801 King Drive, Chicago, IL—1968-1970
 2951 King Drive, Chicago, IL—1971-1974
 Joyce Perry
 134 Granville
 Bellwood, IL
 544-5074
 SS#—274-42-0584
 Previous Address—
 1668 Bryn Mawr, E. Cleveland, OH, 1967-1971
 1412 Madison, Maywood, IL—1971-1975

Answers to Interrogatories

Sandra J. Sharp
 1401 S. 16th Ave.
 Maywood, IL
 345-1762
 SS#—339-36-4853
 Previous Address—
 228 N. LaCrosse, Chicago, IL—1970-to-date
 4639 W. West End Ave., Chicago, IL—1965-1966
 513 N. Homan Ave., Chicago, IL—1964-1965
 Edward B. Powell
 111 30th Ave.
 Bellwood, IL
 544-7691
 SS#—358-34-1199
 Previous Address—
 2115 25th Ave., Broadview, IL—1969-1971
 159 Bode Road, Hoffman Estate, IL—1968-1969
 552 N. Avers, Chicago, IL—1955-1969

EMPLOYMENT INFORMATION

John Lindsey
 Chicago Board of Education
 Leo Burnett Advertising Agency
 Tuesday Publications
 Living Together Publications
 Leadership Council,—Present
 Block Club: 73rd & Prairie; Pres. George Lee
 Never a criminal defendant
 Other Litigation: None
 Vicki Simmons
 Capon Drugs, Berkley, IL
 Block Club: Bellwood Block Club; Chairman Ross Ferraro; Chairwoman Jean Keating; Treasurer Joyce Lev; Secretary Vicki Simmons
 Never a criminal defendant
 Other Litigation: None

Answers to Interrogatories

Mary P. Powell

Stanadyne, Bellwood, IL

Block Club: None

Never a criminal defendant

Other Litigation: Bellwood v. Gladstone Realty, 75 C 3587; Bellwood v. Hintze, 75 C 3589; Bellwood v. Dwayne Realty, 75 C 3588

Edward B. Powell

MTTR Associates, Westchester, IL

Four Phase System, Des Plaines, IL

Servitech, Inc., Westchester, IL

Hypertech, Inc., Harwood Heights, IL

Xerox Data Systems, Chicago, IL

First National Bank of Chicago, Chicago, IL

Block Club: None

Never a criminal defendant

Other Litigation: Meade Electric vs. Powell, 75 MI 112178; Bellwood v. Gladstone, 75 C 3587; Bellwood v. Dwayne, 75 C 3588; Bellwood v. Hintze, 75 C 3589

Charles Elliott

Oscar Mayer & Co., Chicago, Illinois

Fredricks Catering Service, Oak Park, Illinois

Lincoln Bottling Co., Chicago, Illinois

Alloy Automotive Co., Chicago, Illinois

Keebler Co., Elmhurst, Illinois

Motorola, Inc., Chicago, Illinois

Brunswick Corp., Skokie, Illinois—Present

Block Club: Bellwood Block Club; Chairman—Ross Ferraro, Chairwoman—Jean Keating, Treasurer—Joyce Lev, Secretary—Vicki Simmons

Never a criminal defendant

Other Litigation: Bellwood vs. Hintze, 75 C 3589; Bellwood v. Dwayne Realty, 75 C 3588; Bellwood v. Gladstone, 75 C 3587

Kathleen Nichols

Government employee (Refused to be more specific)

Answers to Interrogatories

Block Club: None

Never a criminal defendant

Other Litigation: None

Sandra Sharp

Village of Maywood—Present

School District #89

Tetailers Commercial Agency

Block Club: None

Never a criminal defendant

Other Litigation: Plaintiff in *Sandra T. Sharp and Carolyn Bailey v. School District #89*, 1973; Bellwood v. Hintze

*Plaintiff Sandra Sharp is a citizen of Bellwood who has read the Answers to Interrogatories.

Joyce Perry

Lenerae Electric, Cleveland, Ohio

Calvert Distillers, Cleveland, Ohio

Guiliford & Sons, Cleveland, Ohio

Lenerae Electric, Broadview, IL

Lien Chemical Co., Franklin Park, IL

Block Club: None

Never a criminal defendant

Other Litigation: Bellwood v. Dwayne, 75 C 3588

/s/ Kale Williams

Kale Williams

Subscribed to and sworn before me

this 2nd day of April, 1976.

/s/ Rachael Y. Davis

Notary Public

(seal)

My Commission Expires November 15, 1977

F. Willis Caruso

Marie Sanon

407 So. Dearborn St.

Suite 1360

Chicago, Illinois 60605

341-9345

Answers to Interrogatories

/s/ Vicki Simmons
Vicki Simmons

Subscribed to and sworn before me
this 2nd day of April, 1976.

/s/ Rachael Y. Davis
Notary Public

(seal)

F. Willis Caruso
Marie Sanon
407 So. Dearborn St.
Suite 1360
Chicago, Illinois 60605
341-9345

/s/ Mary P. Powell
Mary P. Powell

Subscribed to and sworn before me
this 2nd day of April, 1976.

/s/ Rachael Y. Davis
Notary Public

(seal)

F. Willis Caruso
Marie Sanon
407 So. Dearborn St.
Suite 1360
Chicago, Illinois 60605
341-9345

/s/ Edward B. Powell Jr
Edward B. Powell

Subscribed to and sworn before me
this 2nd day of April, 1976.

/s/ Rachael Y. Davis
Notary Public

(seal)

Answers to Interrogatories

F. Willis Caruso
Marie Sanon
407 So. Dearborn St.
Suite 1360
Chicago, Illinois 60605
341-9345

/s/ Sandra J. Sharp

Subscribed to and sworn before me
this 2nd day of April, 1976.

/s/ Rachael Y. Davis
Notary Public

(seal)

F. Willis Caruso
Marie Sanon
407 So. Dearborn St.
Suite 1360
Chicago, Illinois 60605
341-9345

/s/ Charles Elliott
Charles Elliott

Subscribed to and sworn before me
this 2nd day of April, 1976.

/s/ Rachael Y. Davis
Notary Public

F. Willis Caruso
Marie Sanon
407 So. Dearborn St.
Suite 1360
Chicago, Illinois 60605
341-9345

*Exhibits to Answers to Interrogatories***AFFIDAVIT OF SERVICE**

Rachael Davis, being duly sworn on oath and deposes and states that she gave the foregoing Answers to Defendants' First Set of Interrogatories to a messenger sent by Johnathan T. Howe, Jenner & Block, One IBM Plaza, Chicago, Illinois 60611, here at 407 So. Dearborn Street, Chicago, Illinois, at or before the hour of 5:00 p.m. on the 2nd day of April, 1976.

/s/ *Rachael Davis*
Rachael Davis

Subscribed to and sworn before me
this 2 day of April, 1976.

/s/ *David A. Schucker*

Notary Public

(seal)

My Commission Expires November 15, 1977

EXHIBIT 4**SALES AUDIT REPORT FORM**

Auditor's Race Cau

Auditor's Name: Edward B. Powell

Auditor's Address: 111 30th, Bellwood

Auditor's Phone Number: 544-7691 — (457-6682—work)

Real Estate Firm's Address: 10150 Roosevelt

Date And Time Of Inquiry: 9:30 am 9/18/75

Real Estate Agent's Name: Stephen Eggerding

Addresses And Listing Prices Of Properties Offered For Sale:

Address	Price
1. 2028 Herbert Berkeley—Drove by	\$44,000
2. 218 Englewood Bellwood Drove by	\$46,000
3. 2632 11th Broadview Drove by	\$45,000
4. 2621 11th Broadview Drove by	\$39,000

*Exhibits to Answers to Interrogatories***Addresses And Listing Prices Of Properties Seen:**

Address	Price
1. 216 Iroquis Hillside	\$44,000
2. 2300 24th Broadview	\$48,000
3. ....	.....
4. ....	.....

Information Given To The Agent By The Auditor:

Name: Ed Powell Phone Number: 885-2113

Address: Hoffman Estates

Family Size: 2 small children

Income: not asked Downpayment: \$10-12

Present Home Sold Or Up For Sale: rent

Credit Information (if any): not asked

State Exactly What You Asked For When You Entered
The Real Estate Office:

3 bedroom brick, in high \$30's low \$40's as close to Mannheim and Roosevelt as possible. Hillside, Berkeley, Broadview, Bellwood, Westchester.

State In A Narrative Form Your Conversation With The
Real Estate Agent:

No comments as to race were made.

No homes east of Mannheim and south of Madison were shown even tho most of the homes in my price range were located there and that these houses would be much closer to where I work (Mannheim & Roosevelt) than the houses shown. After seeing the houses I suggested we look at more but I was told that those were the only ones till the new listings come out.

I felt that he was pushing homes in South Broadview but completely ignoring the many homes for sale in Bellwood east of Mannheim. He mentioned that he lived in Broadview but he had a 1975 vehicle sticker from Brookfield.

We were given the listing book only after he picked the homes he wanted us to see.

*Exhibits to Answers to Interrogatories***EXHIBIT 4: SALES AUDIT REPORT FORM**

Auditor's Race: White

Auditor's Name: Charles Elliott & Vicki Simmons

Auditor's Address: 3211 Jackson St. & 4004 Warren Ave.
Bellwood 60104

Auditor's Phone Number: 544-2803 & 544-4375

Real Estate Firm's Name: Hintze Realtor

Phone Number: 343-5600

Real Estate Firm's Address: 10150 Roosevelt Road

Date And Time Of Inquiry: 9/14/75—approx. 3:00 pm

Real Estate Agent's Name: R. J. Tillman

Addresses And Listing Prices Of Properties Offered For Sale:

	Address	Price
1.	2009 S. 23rd Ave. Broadview	37,500
2.	2621 S. 11th Ave. Broadview	39,500
3.	.....	.....
4.	.....	.....

Addresses And Listing Prices Of Properties Seen:

	Address	Price
1.	None	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....

Information Given To The Agent By The Auditor:

Name: Mr. & Mrs. Charles Elliott

Phone Number: Work 982-6000

Address: 4901 Old Orchard Rd., Skokie, Ill.

Family Size: 2 pre-school children

Income: Not Discussed Downpayment: \$10,000

Present Home Sold Or Up For Sale? Rent

Credit Information (if any): None. Work at Brunswick Corp.—Skokie

Exhibits to Answers to Interrogatories

State Exactly What You Asked For When You Entered The Real Estate Office:

We stated that I was being transferred to Oakbrook and was looking for a home in high 30's to low 40's. Only preference was brick home with 3 bedrooms.

State In A Narrative Form Your Conversation With The Real Estate Agent:

Mr. Tillman began by stating that with our limit he could only put us in Bellwood or Broadview and he said, "Let's be open about it, Bellwood and Broadview are integrated and this would put you into West Bellwood or Broadview". Mr. Tillman did not allow us to page thru listing book by ourselves. He stated that we should be able to get into a home for \$8,000 down instead of \$10,000 so we could buy furniture or whatever else we might need.

I asked him what he meant by integration in Bellwood and Broadview. He stated that there are some black families in Westchester but they are doctors and lawyers and north of Roosevelt in Broadview is heavily integrated.

I advised him that since it was late in day we didn't have time to take a ride with him. He had previously said he would show us the two homes on 11th & 23rd in Broadview and also the area in general. In answer to my question on integration.

When he gave us two listings for us to check out, he again reminded us about north of Roosevelt being integrated and south of Roosevelt in Broadview having 4 or 5 colored families.

/s/ Charles Elliott

Exhibits to Answers to Interrogatories

132

2009 S. 23rd Avenue
Broadview
Brick
Ranch
P
Fager

38 x 125
5
3
1 1/2 PT
TAXES: \$540
SPEC. ASST.: None
GARAGE: 2-CST
NO. CT.: 1

CODE 459-56
6-4
\$ 37,500

ROOM DIMS:
LN 19 x 12
BR 11.3 x 11
K 10.9 x 9.6
B 10.6 x 10.4
B 10.6 x 14.2
DEN 12 x 8

DESCRIPT: Full - Knotty pine - electronic filter - humidifier - 1/2 bath
1ST Living room, kitchen, 3 bedrooms, bath
2ND

POSSESSION: 60 days a/c or sooner
REASON FOR SALE: Relocating
SCHOOL: Wilson (2 blocks) Proviso East
MFG. AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Venetian blinds in living room & kitchen.
Wall to wall carpeting in living room, hall & 1 b.d.
& kitchen cabinets. Newly decorated inside & out in 1974. New 40 gal. Hot water heater. Flood on side. Aluminum S/S & doors. PORTABLE BAR & link fenced yard. Patio. Grs Bar-B-Q next to NO FHA or VA

OWNER: TOMMER, Remo & Anne
BUS. PHONE: 343-5600
RES. PHONE: 343-5600

EXCLUSIVE AGENT: GLADSTONE, REALTORS-Westchester
SALES PERSON: DS

ROBERT A. HINTZE, REALTOR
10150 ROOSEVELT ROAD
WESTCHESTER, ILLINOIS 60153
BUS. 343-5600
RES. 343-5600

Exhibits to Answers to Interrogatories

EXHIBIT 4

SALES AUDIT REPORT FORM

Auditor's Race: Black

Auditor's Name: Sandra T. Sharp

Auditor's Address: 1401 S. 16th Ave.

Auditor's Phone Number: 345-1762

Real Estate Firm's Name: Robert A. Hintze

Phone Number: 343-5600

Real Estate Firm's Address: 10150 Roosevelt Rd.,
WestchesterDate And Time Of Inquiry: Friday, Sept. 19, 1975,
10:30 a.m.Real Estate Agent's Name: Stephen F. Eggerding
(sales mgr.)Addresses And Listing Prices Of Properties Offered For
Sale:

Address	Price
1. 609 Linden Ave., Bellwood	36,500
2. 1041 S. 32nd, Bellwood	37,500
3. 2028 Herbert, Berkeley	44,500
4. 1948 Taft, Berkeley	41,600
5. 1010 Cernan, Bellwood	37,500

Addresses And Listing Prices Of Properties Seen:

Address	Price
1.
2.
3.
4.

408-56

2621 S. 11th Avenue
Broadview
Face Brick
Tri-Level
P
Tyson

50 x 145
5
3
1 CT
TAXES: \$530
SPEC. ASST.:
GARAGE: 2-CST
A.D.: 1

CODE 408-56
6-4
\$ 39,500

ROOM DIMS:
LN 15.9 x 14.10
BR 11 x 13
K 12.7 x 10.3
B 9.2 x 12.10
B 19 x 11
DEN 12 x 8

DESCRIPT: Outside entrance - Sump pump - 220 wiring - Laundry room.
1ST Living room, kitchen
2ND 2 bedrooms, full bath
3RD level: 1 bedroom & large storage closet

POSSESSION: 30 days or sooner a/c
REASON FOR SALE:
SCHOOL: Lindop & St. Eulalia
MFG. AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Central air conditioning. New roof; Cyclone fence; shutters in kitchen; 220 wiring; dishwasher; (4) awnings; sleeve air conditioner in upper level. Shag carpeting in living room & stairs. New carpeting in 3rd bedroom; fully insulated attic. NO FHA or VA

OWNER: RUSSO, Art & Irene
BUS. PHONE: 344-5569
RES. PHONE: 562-4300

EXCLUSIVE AGENT: DWAYNE REALTY
SALES PERSON: JC

TITLE FORM: C T & T
SHOWING INSTR.: Call first
P.L.A. ☐ YES ☐ NO

Exhibits to Answers to Interrogatories

Information Given To The Agent By The Auditor:

Name: Irene Goldston Phone Number: 928-5912

Address: Not given

Family Size: Not given

Income: Not given Downpayment: 7-\$15,000

Present Home Sold Or Up For Sale? Present home sold

Credit Information (if any): None given

State Exactly What You Asked For When You Entered
The Real Estate Office:

3 bedroom brick.

State In A Narrative Form Your Conversation With The
Real Estate Agent:

The agent asked what kind of house I was looking for and I said 3 bedroom brick. He asked what price range and I said \$30,000-\$40,000. He asked what style and I said I was flexible on style, but it would be nice if the house had a garage. He said that most of the houses did. He asked me what town I was interested in and I said that it didn't matter so long as it was in the West Suburban Area. I said that we were trying to get within 1/2 hour travel time of Int'l Harvester in Melrose Park. The agent took my name and phone number and the info given above and then he proceeded to look through the MLS book for me. He showed me facts and a picture of 2 houses in Berkeley followed by one in Hillside. The Berkeley addresses are given on the other page. I expressed some interest in them and he said that the prices were starting to get higher (the book was arranged where the prices ascended). He then turned to the Bellwood section of the book. I expressed an interest in several homes. He then suggested that I select 4 or 5 homes to start and that he would try to call to make arrangements to see them. He said that it would probably be difficult to get inside during

Exhibits to Answers to Interrogatories

the working hours. I then asked if I could have a photocopy of the listings so that I could drive by and get some idea from the outside. He then photocopied the listing. During our discussion I asked about the schools in the area and he said that there were different boards of educations, but that all of the schools were good schools. He commented that he had once taught in Chicago and that the schools in the West Suburban Area were superior to Chicago schools. I asked why the homes in Bellwood were cheaper than in other areas and he said that the lots were smaller.

9/19/75, 4:10 P.M. I phoned Mr. Eggerding and asked if he could set up appointments for me to see 609 Linden in Bellwood, 1948 Taft in Berkeley and 2028 Herbert in Berkeley. Sometime this evening. He said that in checking that the home at 2028 Herbert in Berkeley was off the market as of today. He said he'd try to set up appointments for the other 2 and call me back to verify the appointments.

Exhibits to Answers to Interrogatories

202-56 *136*

1. This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 609 Linden Avenue
CITY: Bellwood
CONSTR: Brick
STYLE: Ranch
P.O.: P
BUILT: 1950
BLDG: Caron

LOT SIZE: 35 x 125
RMS: 5
BED: 3
BATHS: 1
HEAT, GAS, FA: COST: 1
TAXES: \$636
SPEC. ASMT: \$330
GARAGE: 2-COR Frame
A.D.: None

CODE 202-56 6-4
\$36,500
PAGES: West

ROOMS: Full - Finished W/recreation room. Bar & back bar - refrigerator - overhead sewer & sump pump.
1ST: Living room, large kitchen, 3 bedrooms, bath.
END

POSSESSION: 30 days after closing
REASON FOR SALE: Building
SCHOOL: McKinley - St. Simeon - Proviso West
M.M.: CTA & Westtowns
MORTGAGE: AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Aluminum fenced yard. Carpeting in living room, hall, 3 bedrooms & basement. Aluminum storm & screens & doors. Range and refrigerator. Drapes in living room & 1 bedroom.

NO FHA or VA Financing

REFFONE Richard I. Daphnia BUS. PHONE: 444-1101

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254-57 *136*

1. This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 2028 Herbert
CITY: Berkeley
CONSTR: Brick
STYLE: Ranch
P.O.: P
BUILT: 1955
BLDG: None

LOT SIZE: 50 x 135
RMS: 5
BED: 3
BATHS: 1
HEAT, GAS, FA: COST: 1
TAXES: \$508.88
SPEC. ASMT: None
GARAGE: 2-COR Frame
A.D.: None

CODE 254-57 6-4
\$44,500
PAGES: East

ROOMS: Half - W/finished recreation rm W/bar - laundry & work area.
1ST: Living room, kitchen, 3 bedrooms & bath.
END

POSSESSION: To be arranged
REASON FOR SALE: Relocating
SCHOOL: Proviso West - St. Domitilla - Hillside
M.M.: Northwestern
MORTGAGE: AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Living room, front bedroom, master bedroom drapes & rods. Carpeting - Bar- 2 year old Aprilaire humidifier. Shelving throughout. Sump pump - overhead sewers. Fully fenced back yard. Aluminum awnings. 12 x 20 concrete patio. Newly insulated attic. Plastered. Oak trim, hardwood floors, all basement fixtures. Excluding kitchen drapes, girl's bedroom drapes, gun cabinet & oval black rug.

TITLE FORM: C T & T
SHOWING INSTR.: Call first

REFFONE William B. Busby BUS. PHONE: 440-4144

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Exhibits to Answers to Interrogatories

107-5-6 *137*

1. This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 1041 S. 32nd Ave.
CITY: Bellwood
CONSTR: Brick
STYLE: Ranch
P.O.: P
BUILT: 1950
BLDG: None

LOT SIZE: 33 x 126-4-3/4
RMS: 5
BED: 3
BATHS: 1
HEAT, GAS, FA: COST: 1
TAXES: \$630
SPEC. ASMT: None
GARAGE: 2-COR Heated
A.D.: None

CODE 107-5-6 6-4
\$37,500
PAGES: W

ROOMS: Full Sump pump
1ST: All rooms, living rm, kitchen, 3 bedrooms, bath & dining area
END

POSSESSION: July 1st or by arrangement
REASON FOR SALE: Building
SCHOOL: Lincoln
M.M.: CTA & Westtowns
MORTGAGE: 27,100.00 Mid America AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Carpeting in living room, kitchen, dining area. Aluminum storm sash & comb. doors. Appliances not included - negotiable

NO FHA or VA

REFFONE Richard I. Daphnia BUS. PHONE: 834-8543

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985-W7 *137*

1. This information is considered accurate but we accept no liability for errors. The listing may be changed without notice.

ADDRESS: 1948 Taft Avenue
CITY: Berkeley
CONSTR: Brick
STYLE: Cape Cod
P.O.: P & O
BUILT: 1955
BLDG: None

LOT SIZE: 50 x 135
RMS: 6
BED: 3
BATHS: 1
HEAT, GAS, FA: COST: 1
TAXES: \$519.00
SPEC. ASMT: None
GARAGE: 2-COR
A.D.: None

CODE 985-W7 6-4
\$41,600
PAGES: East

ROOMS: Full - wonderful recreation room potential
1ST: Living room, dining room, kitchen, 1 bedroom, bath
END 2 bedrooms.

REDISTRIBUTED COPY (new picture)

POSSESSION: 50 days a/c or b/a
REASON FOR SALE: Bought
SCHOOL: Longfellow - Sunnyside - Proviso West
M.M.: Northwestern
MORTGAGE: AVAILABLE:

INCLUSIONS AND PERSONAL PROPERTY: Stove, refrigerator, carpeting in living room, dining room & 1 bedroom, hall & stairs. Draperies in living room & dining room. Awnings; central air conditioning.

TITLE FORM: C T & T
SHOWING INSTR.: Call first

REFFONE William B. Busby BUS. PHONE: 440-4144

137

Exhibits to Answers to Interrogatories

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403-56 *Under*
Search 1. Map

This information is considered confidential and no liability for errors. The listing may be changed without notice.

ADDRESS: 1010 Cernan Drive
CITY: Bellwood
CONSTR: Brick & Frame
STYLE: Bi-Level
P.O. Box: P
SOLD: 1959
SOLD: Sunset

LOT SIZE: 40 x 120
BMS: 6
BDS: 3
BATHS: 1 1/2
TAXES: \$617
SPE. ADJUST: None
HEAT: GAS FA
GARAGE: 1 1/2 - CAR
FRAME
A.S.

CODE: 403-56
6-4
\$ 37,500

ROOMS: 13.5 x 12.8
LN 10.6 x 9.5
H 9.5
BR 10.4 x 9
BR 13.4 x 10.3
BR 13.4 x 9.10
BR
Fam 13 x 11.6
ULT 10.8 x 11.6

DEPT: Half - recreation room - 1/2 bath - laundry room.
1ST Living room, dining room, kitchen, bath & bedroom
2ND 2 bedrooms.

POSSESSION: To be arranged
REASON FOR SALE: Lincol - Roosevelt Jr. HI - Provise West - St. Silmagn
SCHOOL: WTS. AVAILABLE

WARRANTY: CENTRALLY AIR CONDITIONED
Awnings, Kitchen carpeted, Aluminum S/S/SD. Wall to wall carpeting in living room, dining room, hall & staircase. Fenced yard.

AGENTS: RIANMETTY, Joseph & Callu
BUS. PHONE: 467-0449

ROBERT A. HINTZE, REALTOR
STEPHEN F. EGGERDING, G.R.I.
BROKER

Exhibits to Answers to Interrogatories

EXHIBIT 4

SALES AUDIT REPORT FORM

Auditor's Race: Black

Auditor's Name: John R. Lindsey

Auditor's Address: 7343 So. Prairie Ave.

Auditor's Phone Number: 224-5512

Real Estate Firm's Name: Robert A. Hintze

Phone Number: 343-5600

Real Estate Firm's Address: 10150 Roosevelt Road

Date And Time Of Inquiry: 9/16 6:30 P.M.

Real Estate Agent's Names: Stephen F. Eggerding
Sales Manager

Addresses And Listing Prices Of Properties Offered For Sale:

	Address	Price
1.	400 Marshall, Bellwood, Ill.	.....
2.	632 Marshall " "	.....
3.	214 Eastern, " "	.....
4.	414 Marshall, " "	.....
	213 S. 49th, " "	.....
	2034 S. 20th) Broadview, Ill.	.....
	2632 S. 11th)	.....

Addresses And Listing Prices Of Properties Seen:

	Address	Price
1.
2.
3.
4.

Information Given to The Agent By The Auditor:

Name: John Lindsey Phone Number: 224-5512

Address: 7343 S. Prairie Ave.

Family Size: Three

Income: \$20,000

Downpayment: 8-10,000

Present Home Sold Or Up For Sale? Considering Renting
it or Selling

Credit Information (if any): None

Exhibits to Answers to Interrogatories

State Exactly What You Asked For When You Entered The Real Estate Office:

Would like to see New Homes in the 30-40,000 range.
State In A Narrative Form Your Conversation With The Real Estate Agent:

J.L. We would like to see new homes in the \$30-40,000 range. My company is opening a branch office in Oakbrook.

Mr. E. Fine we have many fine homes. Our office serves Westchester, Broadview, Maywood, Bellwood, Hillside. We have some fine homes in the Bellwood area which you may be interested in.

J.L. Fine. We didn't have an opportunity to look much on the way out. However we did notice a few good looking homes in the area across the street.

Mr. E. Oh that's Westchester and most of the homes over there are out of your price range.

J.L. O. K. let's see what you have.

Homes were shown and discussed—Bellwood, Broadview, misc which included Maywood, Oak Park, Elmhurst.

J.L. Would I have any trouble as a minority person in Bellwood or any of these areas.

Mr. E. Oh no! All our areas are integrated but it doesn't vary in % from community to community.

We will look at these and get back to you.

J.L. Thank you.

Only one home was shown in Westchester, cost \$69,000.

400 Marshall

632 Marshall

217 Eastern

417 Marshall

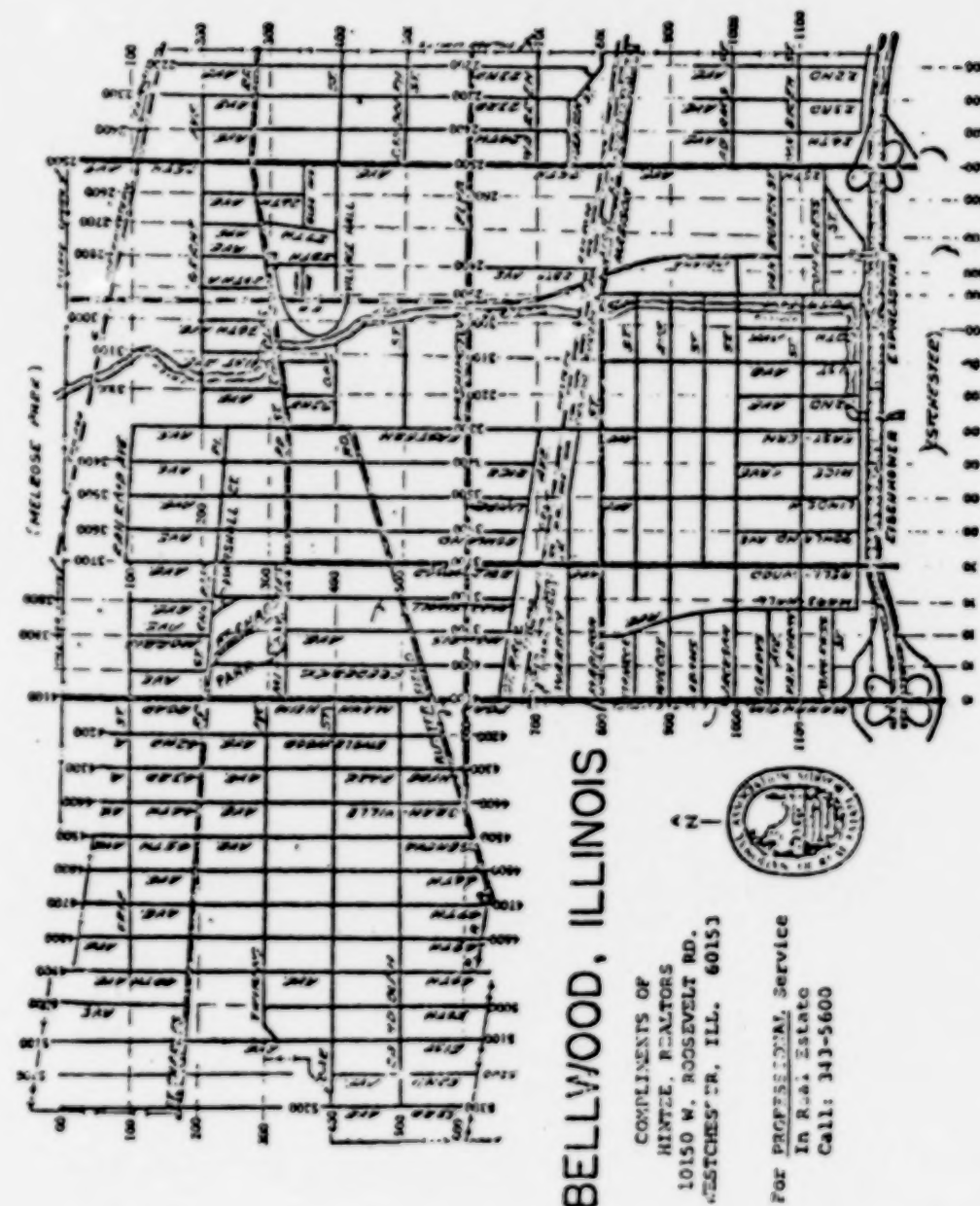
213 S. 49th

Broadview

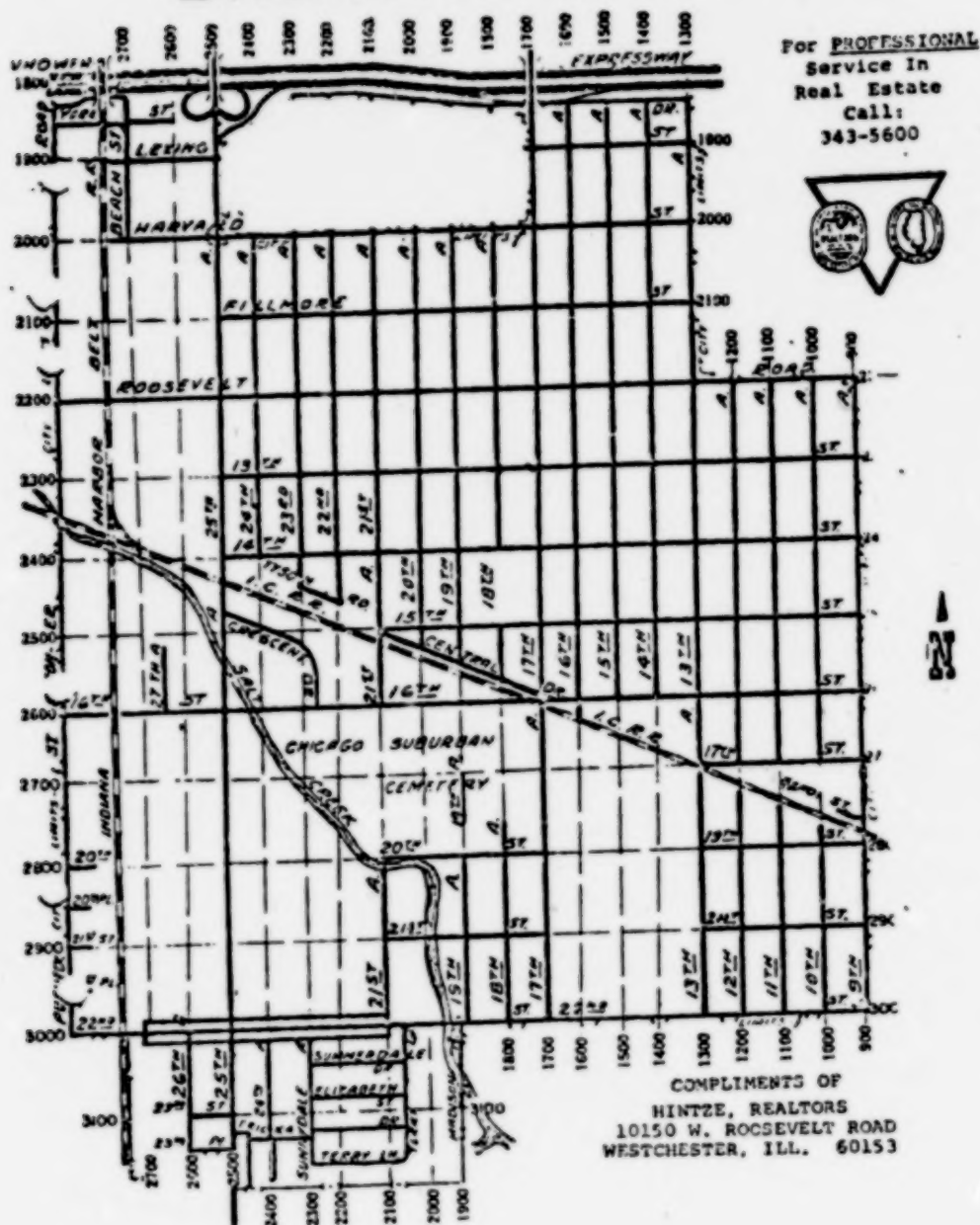
2034 S. 20th

2632 S. 11th

Exhibits to Answers to Interrogatories



BROADVIEW, ILLINOIS



Defendants' Motion for Summary Judgment
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION
 (Titled omitted in printing.)
 DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT
 (Filed July 8, 1976)

Defendants move pursuant to Rule 56(b) of the Federal Rules of Civil Procedure for a summary judgment on the following alternative grounds:

- (1) Plaintiffs have no actionable claim or standing to sue under the provisions of 42 U.S.C. § 3612 and 42 U.S.C. § 1982.
- (2) There is no case or controversy between the parties within the meaning of Article III of the Constitution.
- (3) The "prudential limitations" on the exercise of federal jurisdiction require that plaintiffs not be afforded standing to prosecute this case.

In support of this motion defendants rely on certain of plaintiffs' answers to interrogatories and responses to requests for admission. (Copies of the pertinent Interrogatory Answers and Responses to Request for Admission are attached as Exhibit A to this motion.)

Russell J. Hoover
 Russell J. Hoover
 One of the Attorneys
 for Defendants

JENNER & BLOCK
 One IBM Plaza
 Chicago, Illinois 60611
 222-9350

*Exhibit A to Motion***EXHIBIT A**

The following are those portions of plaintiffs' Answers to Interrogatories and Response to Request for Admissions on which defendants rely to support their motion for summary judgment:

Requests For Admissions

A1. None of the individual plaintiffs who had conversations with the defendants had the intention at the time of said conversations of purchasing a home.

Answer: Admit.

A2. None of the individual plaintiffs who had conversations with the defendants informed the defendants that they were conducting an audit on behalf of the Leadership Council for Metropolitan Open Communities.

Answer: Admit.

I2. With respect to the allegations contained in paragraph 8 of the Complaint:

(a) Identify each act and/or communication of each defendant which you contend is evidence of an effort on his part to (influence the choice of prospective homebuyers on the basis of race).

Answer: The acts of Defendants which allegedly violate 42 U.S.C. § 1982 and 42 U.S.C. § 3601 et seq. are the subject matter of the audit reports.

1) With respect to Plaintiff Edward Powell, See Appendix A.

2) With respect to Plaintiff Mary P. Powell, See Appendix A.

3) With respect to Plaintiff Charles Elliott, See Appendix A.

4) With respect to Plaintiff Vicki Simmons, See Appendix A.

Exhibit A to Motion

5) With respect to Plaintiff Joyce Perry, See Appendix A.

6) With respect to Plaintiff Sandra J. Sharp, See Appendix A.

(b) Identify each act and/or communication of each defendant which you contend is evidence of his discouraging prospective black homebuyers from purchasing homes in white areas on the basis of race.

Answer: See answer to I2(a).

(c) Identify each act and/or communication of each defendant which you contend is evidence of his engaging in unlawful racial steering in violation of 42 U.S.C. § 1982 and 41 (sic.) U.S. § 3604.

Answer: See answer to I2(a).

(d) Identify each homebuyer who you contend used or sought to use the services of Hintze Realtors and whose choice was influenced on the basis of race.

Answer: The plaintiff auditors were acting in the capacity of homebuyers. See Appendix A.

(e) Identify each homebuyer who used or sought to use the services of Hintze Realtors who was discouraged from purchasing a home on the basis of race.

Answer: See answer to I2(d).

I6. With respect to each oral conversation between or among each plaintiff, or anyone purporting to act on his (their) behalf, and each defendant, or anyone purporting to act on his (their) behalf, from January 1, 1975 to the present time:

(a) Identify the parties to the conversation.

Answer: See Appendix A.

Exhibit A to Motion

(b) State the date of the conversation.

Answer: See Appendix A.

(c) State the location of the conversation and identify all persons present.

Answer: See Appendix A.

(d) If the conversation was by phone, state who called whom.

Answer: See Appendix A.

(e) State what was said by each party to the conversation or, if unable to do so, state the substance of what was said by each party to the conversation and indicate that it is the substance rather than the exact words that is being reported.

Answer: See narrative in audit reports, Appendix A. The individual plaintiffs have from time to time conversed with each other, however, the substance and dates of those conversations are not specifically available, but are embodied in Appendix A.

17. Do plaintiffs contend that each of the defendants discouraged prospective black homebuyers from purchasing homes in white areas on the basis of race?

Answer: Yes, the individual plaintiffs in this matter were auditors acting in the capacity of homebuyers.

(a) If the answer is yes, with respect to each defendant identify the black homebuyer and state the date of the discouragement.

Answer: See Appendix A.

Exhibit A to Motion

(b) If the answer is no, identify those defendants as to whom you claim such activity and with respect to each identify the black homebuyer and state the date of the discouragement.

Answer: Not applicable.

PROOF OF MAILING

I, Margrett Kontek on oath state that I served a copy of the foregoing Defendants' Motion For Summary Judgment by placing same in an envelope addressed to F. Willis Caruso, Esq., 470 S. Dearborn, Suite 1360, Chicago, Illinois 60605 ATTN. Horace Fox, Esq., with proper, prepaid postage affixed thereto and by depositing same in the United States Government mail chute at One IBM Plaza, Chicago, Illinois on Tuesday, July 7, 1976 before the hour of 5:00 p.m.

Margrett Kontek

SUBSCRIBED AND SWORN to
before me this 7th day
of July, 1976.

Joan J. Peltz

Notary Public
(Notary Seal)

Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

ORDER

(Filed September 29, 1976)

This cause comes on upon defendants' motion for summary judgment. The court has read and considered said motion and the memoranda of the respective parties in support thereof and in opposition thereto and finds that said motion is well taken and should be granted for the reasons set forth in Judge Decker's thorough and scholarly Memorandum Opinion entered September 23, 1976 in *Village of Bellwood, etc., et al. v. Gladstone Realtors, et al.*, case No. 75 C 3587, which opinion this court hereby adopts as its own. The court notes that the complaint in the aforecited case is almost a verbatim duplicate of the complaint in the instant case, except of course for the names of the defendants, and that plaintiffs' brief in opposition to defendants' motion for summary judgment in the aforecited case is, likewise, almost a verbatim duplicate of their brief in opposition to the instant motion for summary judgment, again except for the names of the defendants.

Accordingly, it is ORDERED that defendants' motion for summary judgment be and it hereby is granted, and that summary judgment be and it hereby is entered in favor of each defendant herein and against plaintiffs herein, with costs to be assessed against the plaintiffs.

J. S. Perry
Judge

Order; Notice of Appeal

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

ORDER

(Filed October 21, 1976)

Plaintiffs' Motion To Reconsider dismissal Order of September 29, 1976 is hereby denied.

Perry
Judge

Horace Fox, Marie Sanon,
F. Willis Caruso
407 So. Dearborn
Chicago, Illinois 60605
Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
(Title omitted in printing.)

NOTICE OF APPEAL
(Filed October 26, 1976)

Notice is hereby given that the Village of Bellwood, a municipal corporation of the State of Illinois, The Leadership Council for Metropolitan Open Communities, a not-for-profit corporation of Illinois, Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp, and Joyce Perry, hereby appeal to the United States Court

Notice of Appeal

of Appeals for the Seventh Circuit from the Memorandum Order on the 29th day of September, 1976.

Horace Fox, Jr.

Horace Fox, Jr.

One of the Attorneys for the Plaintiffs

Horace Fox, Jr.
F. Willis Caruso
Marie V. Sanon
407 South Dearborn Street
Suite 1360
Chicago, Illinois 60605
341-9345

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

DELLA BRUNSON, hereby states that she served the foregoing Notice of Appeal upon the following attorney for the defendants, RUSS HOOVER, Jenner & Block, One IBM Plaza, Chicago, Illinois 60611, by mailing a true and correct copy thereof by first-class, pre-paid mail to said attorney on this 27th day of October, 1976, before the hour of 5:00 p.m.

Della Brunson

DELLA BRUNSON

Subscribed to and sworn before me
this 27th day of October, 1976.

David A. Schucker

NOTARY PUBLIC

My Commission Expires November 15, 1977
(Notary Seal)

Opinion of the Court of Appeals for the Seventh Circuit

in the

United States Court of Appeals
For the Seventh Circuit

No. 76-2193

VILLAGE OF BELLWOOD, *et al.*,

Plaintiffs-Appellants,

v.

GLADSTONE REALTORS, *et al.*,

Defendants-Appellees.

No. 77-1019

VILLAGE OF BELLWOOD, *et al.*,

Plaintiffs-Appellants,

v.

ROBERT A. HINTZE REALTORS, *et al.*,

Defendants-Appellees.

Appeals from the United States District Court for the
Northern District of Illinois
Nos. 75 C 3587 & 75 C 3589

Bernard M. Decker & J. Sam Perry, Judges.

ARGUED SEPTEMBER 16, 1977—DECIDED JANUARY 25, 1978

Before PELL, BAUER, and WOOD, *Circuit Judges.*

PELL, *Circuit Judge.* We have before us consolidated appeals from summary judgments granted the defendants in two lawsuits. In each suit, the same plaintiffs charged a different set of defendants (two real estate brokers and certain individual salespersons) with illegally "steering"

Opinion of the Court of Appeals for the Seventh Circuit

prospective homebuyers to differing residential areas in the vicinity of Bellwood, Illinois, on the basis of their race, in violation of the Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. § 1982. Judge Decker, being of the view that the plaintiffs in No. 76-2193 lacked standing to maintain the action, granted summary judgment and ordered the cause dismissed. In No. 77-1019, Judge Perry adopted Judge Decker's Memorandum Opinion and entered a similar judgment.

The individual plaintiffs in these cases are four white residents of Bellwood, and two black persons, one a resident of Bellwood, and one a resident of adjacent Maywood, Illinois. They asserted in their complaints that they "have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society." The Village of Bellwood is also a plaintiff, alleging "injur[y] by having the housing market in such village wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village." The other plaintiff is the Leadership Council for Metropolitan Open Communities, a non-profit corporation devoted to eliminating housing discrimination in the Chicago metropolitan area, which avers that the racial steering attacked here "hamper[s] and interfere[s]" with the Council's mission, and "cost[s] [it] money" to investigate and attempt to eliminate the practice.

Each of the individual plaintiffs in these cases assisted in the prelitigation investigation of defendants' practices. Their role as testers involved posing as prospective homebuyers in visits to real estate brokers. Couples of different races expressed similar preferences as to type, size,

Opinion of the Court of Appeals of Seventh Circuit

price range, and general location of houses in which they would be interested. The defendants allegedly steered couples making similar requests to houses in different areas, dependent upon the couple's race. All of the tester couples acted solely as investigators; none were making bona fide efforts to purchase homes in the affected area. This fact was deemed critical by both district judges, who held that only the direct victims of actual discriminatory acts had standing to maintain suit under 42 U.S.C. § 3612.

The fact that the individual plaintiffs acted as testers has produced some confusion in these cases, and, before addressing the standing question, it is necessary we clarify the matter. The defendants have argued, *e.g.*, that Congress did not intend to apply the Fair Housing Act to hypothetical cases or to create a remedy for testers, and that the only discrimination attacked produced no injury to anyone because the testers would not have bought a house no matter to what area they were steered. These arguments, at least in part, miss the point. It is true that plaintiffs' discovery admissions that no bona fide homeseekers are in the case negated the complaints' allegations that personal rights "to select housing without regard to race" are implicated here, but the other injuries alleged by the various plaintiffs can and must be assessed without dispositive reference to the role of the individual plaintiffs *qua* testers.

What the testers did was to generate evidence suggesting the perfectly permissible inference that the defendants have been engaging, as the complaints allege, in the *practice* of racial steering with all the buyer prospects who come through their doors. Racial steering, by its nature, is a subtle form of discrimination that is difficult if not impossible to prove otherwise than by comparing the areas

Opinion of the Court of Appeals for the Seventh Circuit

to which homeseekers of different races are directed. The strength of the inference suggested by such a comparison is not affected by whether or not the "homeseeker" has a bona fide intent to purchase a home. To the degree defendants are seeking to saddle plaintiffs with the argument that testers *qua* testers have a cause of action, they have either misread the complaint or erected a straw man. To the degree the argument is that plaintiffs have failed to comply with Fed.R.Civ.P. 56(e) by showing specifically that racial steering was practiced on true homeseekers, it rings hollow in the light of defendants' refusal to date to provide any of the discovery sought by plaintiffs. Moreover, we think the tester evidence itself creates a triable fact issue.

Turning to the standing problems in the case, we assume, for the present purposes, that defendants have engaged in racial steering and that such a practice violates the federal statutes invoked here.¹ Inquiry into standing focuses on the litigant, not on the merits of his claim. The question is "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf. *Baker v. Carr*, 369 U.S. 186, 204 (1962)." *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (footnote omitted; emphasis in original).

¹ See, e.g., in this regard, *Moore v. Townsend*, 525 F.2d 482, 486 (7th Cir. 1975); *Zuch v. Hussey*, 394 F.Supp. 1028, 1047 (E.D. Mich. 1975); *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071, 1074-76 (D.N.J. 1976) (hereinafter *Bergen County*). Cf. *Johnson v. Jerry Pals Real Estate*, 485 F.2d 528 (7th Cir. 1973).

Opinion of the Court of Appeals for the Seventh Circuit

The constitutional limitations of the federal judicial power to cases and controversies engenders the first rule of standing: that the plaintiff must show actual or threatened injury to himself that is likely to be redressed or avoided by a favorable decision. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976); *Warth, supra*, 422 U.S. at 498, 505 (1975). As to the individual plaintiffs, there is no real doubt that the complaints satisfy this requirement.² *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), demonstrates that. Plaintiffs therein attacked the discriminatory rental practices of the large apartment complex in which they lived, asserting injury in their loss of social and professional benefits from living in an integrated community and in their stigmatization as residents of a "white ghetto." *Id.* at 208. The Supreme Court expressly found these averments to establish injury in fact. *Id.* at 209, 211. We reach the same conclusion about the virtually identical allegations of the individual plaintiffs in the cases which are now before us.³

Trafficante does not control the issue of standing of a municipal corporation to challenge illegal manipulation of

² Neither district court, in fact, questioned the sufficiency of the complaints' allegations of injury in fact, and the defendants' only argument on this point is their assertion that the complaints fail to allege racial steering practiced on bona fide homeseekers, which argument we have rejected *supra*.

³ The Court's emphasis in *Trafficante* was on the "loss of important benefits from interracial associations," *id.* at 210, so we think it insignificant that the individual plaintiffs do not expressly allege stigmatization. Such an allegation, in any event, might well be thought to be implicit in the charge that plaintiffs have been denied the benefits of living in an integrated society.

Opinion of the Court of Appeals for the Seventh Circuit

its housing market to the "economic and social detriment" of its citizens, although some guidance is provided by the Court's recognition that

[t]he person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the [Fair Housing] bill, "the whole community,"

Id. at 211 (citation omitted). That much is implicit in our determination that the individual plaintiffs here have alleged actual injury. We need not determine, however, whether or not the Village of Bellwood would have standing if the sole injury alleged was the deprivation to its citizens of the benefits of integrated living. Taking the complaints' allegations as true, and construing them liberally in a light favorable to the Village, *Warth, supra* at 501, it is apparent that specific concrete injury with a substantial nexus to the Village's status as a unit of government could be proved under these complaints. *See Flast v. Cohen*, 392 U.S. 83, 102 (1968). An area targeted as a "changing neighborhood" to which minority homeseekers may be steered could experience unnaturally rapid population turnover, with destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them. *See Zuch v. Hussey, supra*, 394 F.Supp. 1028; *cf. Linmark Associates Inc. v. Township of Willingboro*, 431 U.S. 85 (1977); *Barrick Realty, Incorporated v. City of Gary, Indiana*, 354 F.Supp. 126 (N.D. Ind. 1973), *aff'd*, 491 F.2d 161 (7th Cir. 1974).

By comparison, the actual injury alleged by the Leadership Council is rather slight. The complaints do not set out specific injury to Council members which, arguably, the Council might be accorded standing to assert. The sole

Opinion of the Court of Appeals for the Seventh Circuit

allegations are that racial steering interferes with the Council's mission and costs it funds to attack. But the Council's interest in open housing matters and its asserted commitment to effectuating that interest, albeit commendable, do not substitute for the concrete injury constitutionally required to invoke the jurisdiction of the federal courts. *See Simon, supra*, 426 U.S. at 39-40; *Warth, supra*, 422 U.S. at 511-17; *Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972); *Mulqueeny v. National Commission on the Observance of International Women's Year, 1975*, 549 F.2d 1115, 1120-22 (7th Cir. 1977). The alleged dollar cost to the Council of attacking defendants' alleged practices is simply "concomitant to [its] keen concern" about open housing issues, and does not present independently cognizable injury. *Id.* at 1121. For these reasons, we affirm the judgments of the district courts insofar as they dismissed the Council from the action for lack of standing.

Once it is determined that litigants have alleged actual injury, standing inquiry focuses on whether the rights they assert are "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970). We think that the individual plaintiffs and the Village of Bellwood present claims at least arguably within the ambit of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*⁴

⁴ As we stated earlier, plaintiffs also invoke 42 U.S.C. § 1982. Because § 1982 is set up simply as another theory to justify relief on the same facts to which application of the Fair Housing Act is sought, and there is only one count in each of the complaints before us, we have no need to consider standing under § 1982 separately. *See Trafficante, supra*, 409 U.S. at 209 n.8.

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Once again, *Trafficante*, *supra*, provides substantial guidance. In affirming the standing of two individuals who asserted precisely the same injury as do the individual plaintiffs here, the Court stated that "the reach of . . . law was to replace the ghettos 'by truly integrated and balanced living patterns.'" 409 U.S. at 211 (citation omitted). Congress' concern for those who suffer indirectly from discriminatory acts was stressed, *id.* at 210, 211, as was the fact that "complaints by private persons are the primary method of obtaining compliance with the Act." *Id.* at 209. Quoting a Third Circuit opinion⁵ which had found in the Civil Rights Act of 1964 "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution," the Court expressly "reach[ed] the same conclusion" "[w]ith respect to suits brought under the 1968 Act." *Id.* Using this reasoning, we have no difficulty finding that both the Village and the individual plaintiffs here are at least arguably intended beneficiaries of the substantive provisions of the Act.

Of course, if the procedural provisions of the Act which authorize private suits somehow exclude these plaintiffs or condition their access to federal court on meeting requirements which they have not met, the judgments of the district courts would have to be affirmed nonetheless. The possibility that this is so arises because there are two provisions in the Fair Housing Act authorizing private enforcement. The only plaintiffs explicitly discussed in *Trafficante* brought suit under 42 U.S.C. § 3610, which provides that "[a]ny person who claims to have been injured by a discriminatory housing practice [defined in 42 U.S.C. §

⁵ *Hackett v. McGuire Bros., Inc.*, 445 F.2d 442, 446 (3d Cir. 1971).

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3602(f) as a violation of sections 3604-3606 of the title] . . . (hereafter 'person aggrieved')" may file a complaint with the Secretary of Housing and Urban Development for investigation and conciliation, failing the satisfactory resolution of which he or she may commence a civil action in federal court. The plaintiffs here, never having complained to the Secretary, bring suit under 42 U.S.C. § 3612 (a), which provides in part that "[t]he rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy"

The judgments under review are premised on the theory that *Trafficante* establishes broad standing only for suits under § 3610 and that the preferential access to federal courts contained in § 3612 should be limited to direct victims of discriminatory acts. This theory has been adopted in the Ninth Circuit, *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976), *cert. denied*, 429 U.S. 859, and is not without some plausibility. Although there were intervening plaintiffs in *Trafficante* who had not complained to the Secretary and whose standing thus depended on § 3612, *Trafficante v. Metropolitan Life Insurance Company*, 446 F.2d 1158, 1161 n.5 (9th Cir. 1971), the Supreme Court made no express reference to these plaintiffs. We cannot assume that the Court necessarily adjudicated the standing of all the plaintiffs in the case. See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 n.9 (1977). Moreover, the Court in *Trafficante* placed some emphasis on the "person aggrieved" language of § 3610, which language does not appear in § 3612.

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These factors make it "impossible to tell with certainty" whether *Trafficante* was meant to control cases arising under § 3612, *Bergen County, supra*, 422 F.Supp. at 1082, even though the *Trafficante* opinion cites and quotes both § 3612 and § 3610 without distinguishing between the two and some of the opinion's language, quoted above, would appear to cover all suits brought under the Act.⁶ Assuming, then, that *Trafficante* does not flatly control this case, we have nonetheless reached the conclusion that *TOPIC* was wrongly decided and the district courts erred in relying on it and dismissing these actions.⁷

Whatever may be the pertinence of *Trafficante's* holding for these lawsuits, its thrust and rationale plainly suggest that the individual plaintiffs and the Village of Bellwood have standing. As we have noted, the Court emphasized the Congressional policy of protecting all those injured by discriminatory acts and practices, and stressed the critical importance of "private attorneys general in vindicating a policy that Congress considered to be of the highest priority." 409 U.S. at 211. This reasoning would surely apply here, unless there were some reason to think that Congress intended §§ 3610 and 3612 to serve different types of private litigants.

⁶ Also, the Court expressly reserved decision on the *Trafficante* plaintiffs' standing under 42 U.S.C. § 1982, 409 U.S. at 209 n.8, but made no such reservation as to issues pertaining to § 3612.

⁷ This opinion has been circulated among all judges of this court in regular active service. No judge favored a rehearing *en banc* on the position taken in the opinion rejecting the approach of the Ninth Circuit in *TOPIC*. Judge Tone did not participate in the consideration.

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The Ninth Circuit in *TOPIC* purported to find such a reason in the very duality of the statutory scheme. The court reasoned that the "slower, less adversary context of administrative reconciliation and mediation" was a fitting route to relief for the broad class of those injured under *Trafficante's* standards while the direct preferential access" to the courts set out in § 3612 must have been intended for those who needed judicial relief most, i.e., those directly injured. 532 F.2d at 1276. The *TOPIC* opinion provides no evidence at all that such was in fact the contemplation of Congress, nor have the district courts or the defendants herein offered any.

Indeed, the only legislative history cited to us is inconsistent with the notion of § 3610 as a "slower," less preferred route to relief for those less needy of immediate redress. Open housing legislation was before the Congress as early as 1966. When the possibility of an administrative remedy was first proposed, it was supported on the grounds that it would provide quicker, less expensive, and fairer relief. 112 CONG. REC. 18402, 18405, 18409 (1966) (remarks of Representative Conyers); *id.* at 18409 (remarks of Representative Vivian). At least one Congressman opposed the proposal because it would duplicate relief under the direct judicial method. *Id.* at 18401, 18405 (remarks of Representative McClory).

During House debates in 1968 on the legislation ultimately adopted, Representative Celler, the bill's floor manager, explained the various remedial provisions as simply alternatives, drawing no distinctions between them. 114 CONG. REC. 9560 (1968). Representative Ford introduced an analysis prepared by the staff of the Judiciary Committee which described § 3612 as "apparently an alterna-

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tive to the conciliation-then-litigation approach [contained in § 3610]. . . .” *Id.* at 9612.

In a variety of contexts, federal courts have treated §§ 3610 and 3612 as independent alternative remedies. *See, e.g., Marr v. Rife*, 503 F.2d 735, 739 (6th Cir. 1974); *Miller v. Poretsky*, 409 F.Supp. 837, 838 (D.D.C. 1976); *Young v. AAA Realty Company of Greensboro, Inc.*, 350 F.Supp. 1382, 1384-85 (M.D.N.C. 1972); *Crim v. Glover*, 338 F.Supp. 823, 825 (S.D. Ohio 1972); *Johnson v. Decker*, 333 F.Supp. 88, 90-92 (N.D. Cal. 1971); *Brown v. Lo Duca*, 307 F.Supp. 102 (E.D. Wis. 1969). We reach the same conclusion here, and hold that there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612. *Accord, Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F.Supp. 486 (E.D.N.Y. 1977); *Bergen County, supra*; and *see Village of Park Forest v. Fairfax Realty*, P-H Eq. Opp. Hsing. Rptr. ¶ 13,699 (N.D. Ill. 1975), and P-H Ep. Opp. Hsing. Rptr. ¶ 13,784 (N.D. Ill. 1976); *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975). Our decision is supported by the fact that HUD, which has significant responsibilities in the administration of the Fair Housing Act, apparently makes no distinction between the two classes. 24 C.F.R. 105.16 (1976). *See Trafficante, supra*, 409 U.S. at 210.

It may to some degree seem to offend a judicial penchant for consistency to say that Congress has, in the same act, established an administrative remedy and authorized plaintiffs, at their discretion, to bypass it. The answers are, first, that such a judicial penchant does not give a court the license to write into a statute a distinction Congress never intended, and, second, that there is sense in such a scheme. The administrative provisions of § 3610 merely

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make available the good offices of HUD for conciliation and settlement purposes. Nothing akin to adjudication is to be undertaken, and HUD lacks the power to provide the complainant with any coercive relief. Conciliation through HUD may well be productive in a given case, notwithstanding the toothless nature of the remedy, but it is by no means unreasonable to allow the complainant, who may well have had direct experience with the alleged discriminator, to make that choice. That, in any event, in our opinion, is the course Congress has chosen.

For the reasons set out herein, we decide that the individual plaintiffs and the Village of Bellwood⁸ have standing to litigate these lawsuits. The judgments of the district courts are to that extent reversed, and affirmed insofar as they dismissed out the Leadership Council as a plaintiff, and the cases are remanded for further proceedings not inconsistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

A true Copy:

Teste:

*Clerk of the United States Court of
Appeals for the Seventh Circuit*

⁸ In a single sentence at oral argument, counsel for defendants advanced the argument, not mentioned in their brief, that the Village lacks standing because it is not a “person” as defined in 42 U.S.C. §3602(d). That section does not limit “person” to natural persons, but sets out a broad range of organizations, including “corporations,” within the definition. The Village is a municipal corporation, and we see no reason, or at least defendants have shown none, to construe § 3602(d) to exclude that type of corporation.

No. 77-1493

Supreme Court, U. S.

FILED

MAY 19 1978

MICHAEL RODAK, JR., CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1977

GLADSTONE REALTORS, et al.,

Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,

Respondents.

ROBERT A. HINTZE REALTORS, et al.,

Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,

Respondents.

**On Petition For A Writ of Certiorari To The United States Court
Of Appeals For The Seventh Circuit**

BRIEF FOR RESPONDENTS IN OPPOSITION

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**In the
Supreme Court of the United States**

OCTOBER TERM, 1977

No.

GLADSTONE REALTORS, et al.,
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On Petition For A Writ of Certiorari To The United States Court
Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 9-21)
is reported at 569 F.2d 1013 (7th Cir. 1978). The opinions
of the District Courts (Pet. App. 1-8) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1978. The petition for a writ of certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether homeowners, their village, or a fair housing organization have standing to sue under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.*) or the Civil Rights Act of 1866 (42 U.S.C. § 1982) to prevent illegal racial steering directed against their community by realtors and their agents.

STATUTES INVOLVED

The pertinent constitutional and statutory provisions are set forth at Pet. 2-8.

STATEMENT

On October 24, 1975, respondents Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp, Joyce Perry, the Village of Bellwood, and the Leadership Council for Metropolitan Open Communities filed two complaints charging respectively, that petitioners Gladstone Realtors and six of its salespersons and Robert A. Hintze Realtors and three of its salespersons had engaged in the practice of racial steering in violation of the federal fair housing laws. Title VIII of the Civil Rights

Act of 1968 (the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. §1982). Specifically, petitioners were accused of illegally influencing the choice of prospective homebuyers on the basis of race by discouraging blacks from purchasing homes in predominantly white areas and by discouraging whites from purchasing homes in integrated, "changing", or predominantly black neighborhoods in a designated area of Bellwood, Illinois. Bellwood is a suburb of Chicago to which a number of blacks, such as respondent Joyce Perry, have moved in recent years. As one of the few municipalities in its area with a significant and growing black population, Bellwood has become a "target" community to which realtors and their sales personnel direct black homeseekers who want to live in the western suburbs. Meanwhile, according to reports received by the Village of Bellwood, area realtors steer white homeseekers away from Bellwood to near-by communities such as Berkeley, Westchester, and Hillside. Within Bellwood, itself, certain neighborhoods were being "sold black," while homes in the western part of the Village were only being shown to whites.

Expressing a desire to remain in a stable, integrated community, a number of Bellwood residents, both white and black, asked their Village officials to determine which realtors were racially changing their community and to stop these racial steering and other discriminatory practices before substantial parts of Bellwood were resegregated. These residents wanted to avoid the fear, panic and hardship that they knew often accompanied rapid racial change in a community, where "if the real estate industry is allowed to operate unchecked, the pace of racial transi-

tion will be manipulated in a way that will irreparably distort any chance for normal and stable racial change.”¹

With the help of the Leadership Council and many of its own citizens, the Village responded by organizing and conducting an investigation of real estate practices in the Bellwood area in September of 1975. In the course of this investigation, several of the individual respondents and other volunteers acting as prospective homebuyers visited various real estate offices in order to ascertain whether a black prospect would be treated differently than a white prospect. 569 F.2d, at 1015. These “tests” showed that agents of petitioners Gladstone Realtors and Robert A. Hintze Realtors would discriminate between prospective homebuyers on the basis of their race: white and black prospects who asked for the same thing in terms of price, size, and general location were shown homes in different areas, with the blacks’ housing choice often being limited

¹ *Zuch v. Hussey*, 394 F. Supp. 1028, 1034 (E.D. Mich. 1975). With respect to the effects of rapid racial change on a community and the role that realtors may play in that change, see also *id.*, at 1032-1034 and 1053-1055; *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115, 124 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973); *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1240 (N.D. Ga. 1969); *United States v. Mitchell*, 355 F. Supp. 1004, 1005-1006 (N.D. Ga. 1971), *aff’d*, 474 F.2d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973); *Barrick Realty Co. v. City of Gary, Indiana*, 354 F. Supp. 126, 135 (N.D. Ind. 1973), *aff’d*, 491 F.2d 161 (7th Cir. 1974); *United States v. Real Estate One, Inc.*, 433 F. Supp. 1140, 1150 (E.D. Mich. 1977).

to eastern Bellwood alone or in some cases to Bellwood and other integrated or racially changing communities.²

As a result of this and similar evidence produced by Bellwood’s investigation, the Village, six local homeowners, and the Leadership Council brought these suits under the federal fair housing laws to recover damages and to have petitioners’ discriminatory practices declared illegal and enjoined. The individual respondents are four white residents of Bellwood, Illinois and two blacks, one a resident of Bellwood, the other a resident of neighboring Maywood, Illinois. 569 F.2d, at 1015. As homeowners in the area affected by petitioners’ racial steering practices, these respondents alleged that Gladstone’s and Hintze’s illegal conduct denied them their right to select housing without regard to race and deprived them “of the social and professional benefits of living in an integrated society.” 569 F.2d, at 1015. For its part, the Village of Bellwood alleged that it has been injured “by having the housing market

² For example, when Lonnie M. Randolph, a black, visited defendant Gladstone Realtors’ office in Westchester and asked salesman Ted Wolnik for homes in the \$30,000-\$40,000 range, he was shown five house listings, all in the neighborhoods in eastern Bellwood where substantial numbers of blacks already lived (see *Plaintiffs’ Answers to Defendants’ First Set of Interrogatories in Gladstone*, Sales Audit Report Form of Lonnie M. Randolph (9/20/85)); when Edward B. Powell, who is white, visited the same office and made the same request, he was given five entirely different listings, all of which were in all-white neighborhoods in Westchester, southern Broadview, and western Bellwood (*id.* Sales Audit Report Form of Edward B. Powell (9/27/75)). The salesman with whom Powell dealt told him that “there are some areas of Bellwood he did not want to show us because they were bad areas. When asked why they were bad, he said they were integrated.”

in [Bellwood] wrongfully and illegally manipulated to the economic and social detriment of the citizens of [Bellwood]." *Ibid.* Finally, the Leadership Council asserted that petitioners' steering practices interfered with its work of combatting housing discrimination in the Chicago area and required it to make substantial expenditures to investigate and eliminate those unlawful acts. *Ibid.*

In response to these complaints, petitioners filed motions to dismiss in both cases on November 17, 1975. While these motions were pending, both sides filed written interrogatories, requests for production of documents, and requests for admissions. Respondents answered these requests in both cases on April 2, 1976; petitioners, however, never responded to the discovery requests directed to them.

On July 7, 1976, petitioners filed motions for summary judgment in both cases. These motions, which were based in part on the interrogatory answers and admissions received from respondents, alleged that none of the respondents had standing to assert their claims under the federal fair housing laws because they were not actually in the market for new homes. On September 23, 1976, Judge Decker entered his Memorandum Opinion granting petitioners' motion in the *Gladstone* case and dismissing the cause. 569 F.2d, at 1015. On September 29, 1976, Judge Perry explicitly adopted Judge Decker's earlier opinion granting petitioners' motion for summary judgment and dismissed the *Hintze* case. *Ibid.*

The Court of Appeals reversed. It held that the thrust and rationale of this Court's decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972) "plainly suggest that the individual plaintiffs and the Vil-

lage of Bellwood have standing." 569 F.2d, at 1019.³ The Court of Appeals noted that the allegations of the individual homeowners here were "virtually identical" to those that *Trafficante* had held were sufficient to establish standing under Title VIII. *Id.*, at 1016. With respect to the Village of Bellwood, the court pointed out that

it is apparent that specific concrete injury with substantial nexus to the Village's status as a unit of government could be proved under these complaints. See *Flast v. Cohen*, 392 U.S. 83, 102 (1968). An area targeted as a "changing neighborhood" to which minority homeseekers may be steered could experience unnaturally rapid population turnover, with destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them.

Id., at 1017.

³ The Court of Appeals affirmed the lower court's dismissal of the Leadership Council on the ground that the Council's commitment to fair housing in these cases was not sufficient to satisfy the Article III requirements for standing under such cases as *Sierra Club v. Morton*, 405 U.S. 727 (1972). This part of the Court of Appeal's decision conflicts with a number of other federal court decisions (*e.g.*, *Park View Heights Corporation v. City of Black Jack*, 467 F.2d 1208 1212-1213 (8th Cir. 1972)) and substantially extends the holding of *Sierra Club*, since the Leadership Council has alleged financial injury and not merely a general, abstract concern about fair housing in Bellwood. Nevertheless, since the Court of Appeals accorded standing to the individual homeowners and the Village of Bellwood here, the Leadership Council would not independently ask this Court to review its dismissal from these cases. If the petition for certiorari is granted, however, respondents respectfully request that review encompass the entire case, including the question of the Leadership Council's standing.

Finally, the Court of Appeals rejected the argument adopted by the Ninth Circuit in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976), *cert. denied*, 429 U.S. 859 (1976) that homeowners in an area where local realtors engage in racial steering cannot bring Title VIII complaint directly in federal court under 42 U.S.C. § 3612 without first filing a complaint with HUD under 42 U.S.C. § 3610. After careful consideration of the language, intent, and legislative history of Title VIII, the Seventh Circuit joined the numerous other federal courts throughout the country that have concluded that *TOPIC* was wrongly decided⁴ and held that “there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612.” 569 F.2d, at 1019. The Court of Appeals therefore remanded these cases to the District Courts for further proceedings.

⁴ *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F.Supp. 486 (E.D. N.Y. 1977); *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service*, 422 F.Supp. 1071 (D. N.J. 1976); and *see Zuch v. Hussey*, 394 F.Supp. 1028 (E.D. Mich. 1975); *Village of Park Forest v. Fairfax Realty*, P-H Eq. Opp. Hsing Rptr. ¶13,699 (N.D. Ill. 1975) and P-H Eq. Opp. Hsing Rptr. ¶13,784 (N.D. Ill. 1976); *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975).

ARGUMENT

The writ of certiorari should be denied, because the petition fails to suggest any special and important reason for review by the Supreme Court. The Court of Appeals' decision remanding these cases to the trial courts is not a final judgment. Its interpretation of Title VIII is in accord with this Court's decision in *Trafficante v. Metropolitan Life Insurance Co.*, *supra*. In addition, the conflict between the Court of Appeals decision here and the Ninth Circuit's decision in *Topic* is not likely to have continuing significance, since *TOPIC*'s erroneous analysis has been repudiated by a growing number of federal court decisions, making review by this Court unnecessary.

I.

THE CASE IS NOT RIPE FOR REVIEW.

The Supreme Court will not usually grant certiorari to review a nonfinal judgment, such as the Court of Appeal's decision here. *E.g.*, *American Construction Co. v. Jacksonville, T. & K. R. Co.*, 148 U.S. 372, 384 (1893); *Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (“because the Court of Appeals remanded the case, it is not yet ripe for review by this Court.”) All the Seventh Circuit has done is to block petitioners' efforts to prematurely end this litigation by summary judgment at a time when the ultimate factual issues—whether illegal racial steering has occurred and how respondents were injured thereby—are still very much in dispute. As the Court of Appeals noted, petitioners' argument “rings hollow in the light of defendants' refusal

to date to provide any of the discovery sought by plaintiffs." 569 F.2d, at 1016. By remanding these cases to the trial courts for further proceedings, the Court of Appeals has insured that there will be an opportunity to fully develop the factual record concerning petitioners' conduct and respondents' injuries. These matters are basic to any rational resolution of standing issues, and it would be unfortunate as well as unusual for this Court to deal with those issues by reviewing an interlocutory decision on the basis of such a one-sided and inadequate record.

II.

THE DECISION IS CORRECT.

A. Respondents Have Standing.

The complaints allege in substance that petitioners' discriminatory practices are resulting in unnaturally rapid racial change amounting to resegregation in the Bellwood area and that respondents are thus being deprived of the social, professional, and economic benefits of living in an integrated community. The Supreme Court has unanimously held that precisely this claim is "[i]ndividual injury or injury in fact" sufficient to satisfy the requirements of standing. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972).

Respondents' allegation that the racial make-up of their community is being illegally changed by petitioners' steering practices satisfies both the constitutional and statutory requirements of standing. As homeowners in the affected area, respondents are being injured in a real and tangible way by petitioners' unlawful conduct and are not, as petitioners claim, merely the "indirect victims" of that conduct.

In addition to being deprived of their "*Trafficante*" right to live in an integrated community, respondents must also face the serious economic problems and other hardships that result when rapid racial change is engineered by local realtors. See, e.g., *Zuch v. Hussey*, 394 F. Supp. 1028, 1032-1034 (E.D. Mich. 1975); *Shannon v. HUD*, 436 F.2d 809, 818 (3rd Cir. 1970). Thus, the Court of Appeals correctly held that respondents have standing.

Since respondents have alleged injuries that are concrete and tangible and since a federal court can provide relief that would redress those injuries,⁵ the "minimum constitutional" requirements of standing under Article III have been met. See *Warth v. Seldin*, 422 U.S. 490, 498-499 (1975); *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976). Indeed, even the District Courts assumed as much when they decided the cases on the bases of their interpretation of Title VIII, since that issue would not have been reached unless the "threshold requirement imposed by Art. III" had been satisfied. *O'Shea v. Littleton*, 414 U.S. 488, 493 (1974); see also 569 F.2d, at 1016, n.2.

Since respondents' claims are brought under specific statutory provisions, the issue of their standing to assert those claims depends on whether they are "arguably

⁵ See, e.g., *Zuch v. Hussey*, *supra* (enjoining racial steering under Title VIII); *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F.Supp. 486, 489 (E.D. N.Y. 1977) ("a court order enjoining the alleged racial steering would relieve this injury by terminating a major disruptive influence on the racial and financial stability of Wheatley Heights."); see generally *Louisiana v. United States*, 380 U.S. 145, 154 (1965); *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239 (1969).

within the zone of interests to be protected" by the federal fair housing laws. *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970); *Barlow v. Collins*, 397 U.S. 159, 163 (1970). There can be no question that the allegation that petitioners have engaged in racial steering by directing similarly-situated white and black homeseekers to different neighborhoods states a cause of action under Title VIII. *E.g.*, *Zuch v. Hussey*, *supra*; *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service*, 422 F.Supp. 1071, 1074-1076 (D. N.J. 1976) (both Title VIII and §1982 violated); *Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975) (both Title VIII and §1982 violated); see also Note, "Racial Steering: The Real Estate Broker and Title VIII," 85 Yale L.J. 808, 818-821 (1976). In holding that racial steering violates the fair housing laws, federal courts have recognized that the intent of these laws is not merely to prevent discriminatory refusals to deal, but is to foster integrated communities for the benefit of both white and black residents and homeseekers. Congress declared in Title VIII that it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States" (42 U.S.C. §3601), and the Supreme Court has made clear that the "language of the Act is broad and inclusive" and should be given a "generous construction" to effectuate its purpose of replacing "the ghettos by truly integrated and balanced living patterns." *Trafficante v. Metropolitan Life Insurance Co.*, *supra*, 409 U.S., at 209-212. As this Court pointed out in *Trafficante*, "[t]he person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, 'the whole community.'" *Id.*, at 211; see also *Linmark Associates, Inc. v. Township of Willingboro*, 97 S.Ct. 1614, 1619 (1977). Thus,

Trafficante held that Congress intended to define standing to sue under Title VIII as broadly as is permitted by Article III. 205 U.S., at 209.

Residence of specific neighborhoods or communities whose racial make-up is being fashioned by discriminatory housing practices are subject to the same injuries and assert the same interests as did the plaintiffs in *Trafficante*. "The real issue in this litigation is whether the real estate industry should be allowed to enter into the process and, for commercial advantage, artificially hasten or at least accelerate the rate of population turnover and the pace of racial change." *Zuch v. Hussey*, *supra*, 394 F.Supp., at 1033. Respondents must be allowed to raise this issue here, for it is *their* right to select and maintain their present homes without regard to racial considerations that petitioners are violating. The fact that others seeking homes may also be victims of petitioners' practices does not reduce the present homeowners' interests in residing in a stable, integrated neighborhood and in not being "panicked" out of Bellwood. The residents of this area should not be made to depend on suits by third parties who have actually been steered for protection of their rights, particularly since the actual homeseekers may not know they have been steered or may not have the interest or resources to fight petitioners' discriminatory practices.

Respondents' claim is that the racial steering practices engaged in by local realtors will resegregate and destroy the stable, integrated community in which they presently live. This constitutes a direct, real, and serious injury to these homeowners. Their interests are precisely those that Title VIII was intended to advance. Thus, the District Courts' conclusion that respondents "only claim to have

suffered indirect injury from the action of the defendants” (Pet. App. 3) was properly reversed by the Court of Appeals.

B. Standing Under §3612 Is As Broad As Standing Under §3610.

Title VIII provides two ways for private plaintiffs to bring housing discrimination complaints in court: they may sue directly pursuant to 42 U.S.C. §3612 or they may first complain to HUD pursuant to 42 U.S.C. §3610. Respondents brought their claims directly under §3612. Petitioners concede that under *Trafficante* these claims would be appropriate under §3610, but they argue that standing to sue under §3612 should be narrower than standing under §3610. The Court of Appeals correctly rejected this argument, which directly conflicts with the Supreme Court’s decision in *Trafficante* and with the purpose and history of Title VIII.

Trafficante was decided under both §3610 and §3612. The original plaintiffs brought suit pursuant to §3610, §3612, and 42 U.S.C. §1982, alleging that their landlord’s discriminatory practices interfered with their opportunity for interracial association and with the professional and social benefits of living in an integrated community. Complaints in intervention were filed by individual and organizational plaintiffs under §3612 and §1982. These intervening plaintiffs had not complained to HUD as had the original plaintiffs, and their only possible basis for standing under Title VIII was §3612. The District Court dismissed the action, holding that plaintiffs and plaintiffs in intervention lacked standing, and the Ninth Circuit affirmed. The Supreme Court granted certiorari, thereby accepting for review the question whether plaintiffs and intervenors

had standing. The Court unanimously held that they did. While explicitly stating that it was unnecessary to reach the question of standing under §1982 (409 U.S., at 209, n.8), this Court held that standing was present to assert all claims under Title VIII, which included claims under both §3610 and §3612. Had the Court intended to leave undecided the claims under §3612—the *only* claims under Title VIII that had been asserted by the plaintiffs in intervention—it would surely have included such a limitation in the footnote that excludes from consideration claims under §1982. Moreover, the paragraph of the Court’s opinion that accords broad standing under Title VIII to persons complaining of injury to their opportunity for interracial association follows a discussion of Title VIII which explicitly recognizes the direct judicial remedy provided by §3612.

The reasoning that underlies the Supreme Court’s decision in *Trafficante* applies in all respects to suits brought pursuant to §3612 as well as to those under §3610. With regard to enforcement of Title VIII, the Court concluded that:

Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits in which, the Solicitor General says, the complainants act not only on their own behalf but also “as private attorneys general in vindicating a policy that Congress considered to be of the highest priority.”

409 U.S., at 211. In view of the Court’s references in *Trafficante* to the “enormity of the task of assuring fair housing” and to the Congressional intent “to replace the ghettos by truly integrated and balanced living patterns,” petitioners’ suggestion that §3612 should be narrowly con-

strued goes against the grain of the entire opinion. If the task is enormous and is to be primarily carried out by private litigants, it cannot be accomplished by reading narrowly the one section that deals solely with private litigation.

The legislative history of Title VIII contains no support for the claim that standing under §3612 was designed to be narrower than standing under §3610. Throughout the Congressional debates in 1966, 1967, and 1968 on a fair housing bill, the administrative and judicial remedies were described as being alternatives to one another against the same kinds of conduct and for the same kinds of complainants. See 569 F.2d, at 1019. Moreover, the legislative history shows that the words "person aggrieved" in §3610 were intended to limit standing, not to expand it, so that their omission from §3612 suggests at least equal standing to that accorded to complainants under §3610. See Remarks of Representative Cramer and Attorney General Katzenbach, Hearings on H.R. 3296, U.S. House of Representatives, Committee on the Judiciary, 89th Congress, 2nd Session (May 5, 1966), p. 1203. Thus, as the Court of Appeals noted, federal courts have responded to this clear Congressional mandate by holding in a variety of contexts that §3610 and §3612 provide for independent, alternative remedies, and, in particular, that there is no difference between the class of plaintiffs with standing to sue under §3612 and those with standing to sue under §3610. See 569 F.2d, at 1019 and cases cited.

III.

THE CONFLICT WITH TOPIC DOES NOT REQUIRE RESOLUTION BY THE SUPREME COURT.

The Ninth Circuit's decision in *TOPIC* is wrong. It conflicts with this Court's decision in *Trafficante* and with the clear purpose and history of Title VIII. It has been rejected not only by the Seventh Circuit here, but by numerous other federal courts as well. *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*; *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service*, *supra*; and see *Zuch v. Hussey*, *supra*; *Village of Park Forest v. Fairfax Realty*, P-H Eq. Opp. Hsing. Rptr. ¶13,699 (N.D. Ill. 1975) and P-H Eq. Opp. Hsing. Rptr. ¶13,784 (N.D. Ill. 1976); *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975). Thus, whatever conflict there is between *TOPIC* and other decisions is being settled in the lower courts against the *TOPIC* position and is not likely to be of continuing significance. Full review in the Supreme Court is not necessary at this time.

In recent years, this Court has produced a number of decisions involving standing in fair housing cases. *E.g.*, *Trafficante v. Metropolitan Life Insurance Co.*, *supra*; *Warth v. Seldin*, *supra*; *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). The fact that a court of appeals occasionally applies one of these decisions improperly, as the Ninth Circuit did in *TOPIC*, is not sufficient ground to justify yet another full review of a case by the Supreme Court. With the decision below, the Seventh Circuit has joined the growing list of federal courts that have already repudiated *TOPIC*,

which is destined to fade as a precedent. In the unlikely event that another court of appeals ever decides to follow *TOPIC*, there will be time enough for this Court to step in and resolve the conflict.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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ROBERT G. SCHWEMM

Attorneys for Respondents

May 19, 1978

No. 77-1493

Supreme Court, U. S.
FILED

**In the
Supreme Court of the United States**

OCTOBER TERM, 1977

GLADSTONE, REALTORS,[®] et al.,

Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,

Respondents.

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Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,

Respondents.

**On Petition For A Writ of Certiorari To The United States Court
Of Appeals For The Seventh Circuit**

BRIEF FOR PETITIONERS

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**In the
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OCTOBER TERM, 1977

No. 77-1493

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On Petition For A Writ of Certiorari To The United States Court
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OPINIONS BELOW

The opinion of the Court of Appeals, which is reported at 569 F.2d 1013 (7th Cir. 1978), appears in the Appendix hereto. *Appendix* 151-163. The opinions rendered by the

United States District Court for the Northern District of Illinois, which are unreported, are also contained in the Appendix hereto. *Appendix* 83-89, 148.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on January 25, 1978. The petition for certiorari was granted on June 12, 1978. This Court's jurisdiction is invoked pursuant to Section 1254(1) of Title 28, United States Code.

QUESTION PRESENTED

Whether natural persons and municipalities, who are not direct victims of discrimination in the sale or rental of housing, have any right under Article III of the United States Constitution and Sections 1982, 3604 and 3612 of Title 42, United States Code, to bring suit against real estate brokers whom they allege to have engaged in racial steering, on the theory that racial steering interferes with such persons' generalized interest in living in an integrated society.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article III, Section 2, Clause 1:

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming

Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

United States Code, Title 42:

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

§ 3602. Definitions

As used in this subchapter—

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

§ 3604. Discrimination in sale or rental of housing

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or dis-

crimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

§ 3610. Enforcement

Person aggrieved; complaint; copy; investigation; informal proceedings; violations of secrecy; penalties

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under

this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

Complaint; limitations; answer; amendments; verification

(b) A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with

reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with the subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

Burden of proof

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

Trial of action; termination of voluntary compliance efforts

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or sections 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

§ 3612. Enforcement by private persons

Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders

(a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however*, That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however*, That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Injunctive relief and damages; limitation; court costs; attorney fees

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

STATEMENT OF THE CASE

On October 25, 1975, six individual plaintiffs, the Village of Bellwood, Illinois, and the Leadership Council for Metropolitan Open Communities filed an action in the United States District Court for the Northern District of Illinois, alleging that Gladstone, Realtors,® and six of its salespersons had engaged in the practice of "racial steering" of prospective home purchasers in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1982, and the Fair Housing Act of 1968, 42 U.S.C. § 3604. *Appendix 4-7*. Federal jurisdiction was alleged under 28 U.S.C. §§ 1343(4) and 2201, as well as 42 U.S.C. § 3612. On the same date, the same plaintiffs filed a substantially identical complaint against defendants Robert A. Hintze, Realtors,® and three of its employees. *Appendix 97-100*. Gladstone, Realtors,® and

Robert A. Hintze, Realtors,® are both real estate brokerage firms doing business in Bellwood, Illinois. *Appendix 5, 98*.

The Plaintiffs

The individual plaintiffs in both actions are four white residents of Bellwood, a black resident of Bellwood, and a black resident of another municipality. *Appendix 4-5, 32-37, 97, 121-25*. Initially, plaintiffs alleged two distinct injuries: that they had "been denied their right to select housing without regard to race and [that they had] been deprived of the social and professional benefits of living in an integrated society." *Appendix 6, 13*. In response to defendants' requests for admissions, however, the individual plaintiffs admitted that they had acted only as investigators or testers; none of them had intended to purchase or rent a home in Bellwood during the relevant time period. *Appendix 28, 32, 117, 121*.

Moreover, in answers to interrogatories, plaintiffs were unable to identify any bona fide homeseeker who they contended "used or sought to use [defendants'] services . . . and whose choice was influenced on the basis of race" or "who was discouraged from purchasing a home on the basis of race." *Appendix 28, 117*. Plaintiffs' interrogatory answers stated that the acts of the defendants which allegedly violated 42 U.S.C. § 1982 and §§ 3601 *et seq.* were reported in the testers' summaries of their visits to defendants' offices. *Appendix 27, 116*. Consequently, the individual plaintiffs' claim of injury rests solely on the generalized allegation that they were denied the benefits of living in an integrated society.

The Village of Bellwood also based its claim for relief on the generalized allegation that "the housing market in said village [was] wrongfully and illegally manipulated to the economic and social detriment of the citizens of such

village." *Appendix 6*, 99. The Village admitted that it had not expended any money as a result of the activities of which it complained. *Appendix 29*, 118.

The Leadership Council for Metropolitan Open Communities, a voluntary association dedicated to open housing, alleged that "[s]uch acts and practices . . . hamper and interfere with [its] work and purpose . . . and cost [it] money to provide an audit and other efforts to eliminate such unlawful acts." *Appendix 6*, 98-99.

Relief Sought

In both cases, plaintiffs sought damages, a declaratory judgment, and injunctive relief. First, plaintiffs sought a declaratory judgment that the individual plaintiffs cannot be denied the right to inspect, negotiate for purchase, and purchase homes on the basis of race. Second, they asked that defendants be permanently enjoined from racial steering, from attempting to dissuade homeseekers from purchasing homes in particular areas because of racial characteristics, and from encouraging homeseekers to purchase homes in particular areas because of racial characteristics. Third, plaintiffs asked that they be awarded compensatory and punitive damages amounting to several hundred thousand dollars, as well as costs and attorneys' fees. *Appendix 6-7*, 99-100.

Trial Court Proceedings

In July 1976, on the basis of plaintiffs' answers to interrogatories and formal admissions, defendants moved for summary judgment in both cases; they argued that plaintiffs had not established an actionable claim or standing to sue under Sections 1982, 3604, and 3612 of Title 42, and that they had failed to demonstrate the existence of a case or controversy under Article III of the United States Constitution. *Appendix 78-81*, 143-47.

On September 23, 1976, Judge Bernard Decker, to whom the *Gladstone* case was assigned, granted defendants' motion for summary judgment. *Appendix 83*. The district court found that the individual plaintiffs were merely investigators or testers, and that none of them had made any bona fide effort to purchase a home in Bellwood during the relevant period. Consequently, the individual plaintiffs could not have been denied the right to select housing without regard to race. At most, the individual plaintiffs could have suffered only the indirect or generalized injury of being denied the benefits of living in an integrated society. *Appendix 84-85*.

Relying on the Ninth Circuit's decision in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), Judge Decker held that the individual plaintiffs lacked standing to sue because "a cause of action under § 3612 exists only for 'the direct victims' of a practice proscribed by § 3604." *Appendix 86*. The district court also held that plaintiffs' allegations of indirect injury failed to state a claim under Section 1982. *Appendix 29*. Finally, the district court held that neither the Village of Bellwood nor the Leadership Council had suffered a cognizable injury. *Appendix 84, 87, 89*.

On September 29, 1976, defendants' motion for summary judgment was granted in *Hintze*. The district court adopted Judge Decker's opinion in *Gladstone*, which it found dispositive, because "the complaint in the *aforecited* case is almost a verbatim duplicate of the complaint in the instant case." *Appendix 148*. A timely notice of appeal was filed in both cases (*Appendix 91, 149-50*), and they were subsequently consolidated for purposes of appeal.

Seventh Circuit Proceedings

On January 25, 1978, the Court of Appeals for the Seventh Circuit reversed in part the decisions of the district court. The Court of Appeals held that the Leadership Council's "interest in open housing matters and its asserted commitment to effectuating that interest, albeit commendable, do not substitute for the concrete injury constitutionally required to invoke the jurisdiction of the federal courts." *Appendix 156-57*. The court also held, however, that the individual plaintiffs and the Village of Bellwood had stated a claim and had standing to sue under Sections 3604 and 3612. *Appendix 155, 156, 158, 163*. In view of its holding, the court declined to consider standing under Section 1982 separately. *Appendix 157, n.4*.

The Court of Appeals held that the individual plaintiffs, as residents of the Bellwood community, had standing to complain that they had lost the benefits of living in an integrated society. The Seventh Circuit relied on *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), in which this Court held that residents of an apartment complex had standing under Section 3610, another section of the Fair Housing Act, to complain that their landlord's rental practices had deprived them of the social and professional benefits of living in an integrated community. While noting that *Trafficante* was not technically controlling in the present case, the Court of Appeals held that "its thrust and rationale plainly suggest that the individual plaintiffs and the Village of Bellwood have standing." *Appendix 160*.

The Seventh Circuit explicitly rejected the *TOPIC* court's conclusion that Section 3612 should be construed more narrowly than Section 3610, although it acknowledged that that view was "not without some plausibility." *Appendix 159*.

With respect to the Village of Bellwood, the Court of Appeals found it unnecessary to determine "whether or not [the Village] would have standing if the sole injury alleged was the deprivation to its citizens of the benefits of integrated living [because] . . . it is apparent that specific concrete injury with a substantial nexus to the Village's status as a unit of government could be proved under these complaints." *Appendix 156*.

SUMMARY OF ARGUMENT

The individual plaintiffs and the Village of Bellwood brought this action complaining that they had been injured indirectly by defendants' alleged racial steering of prospective homeseekers. The individual plaintiffs alleged that they had been "deprived of the . . . benefits of living in an integrated society." *Appendix 6, 99*. The Village of Bellwood alleged that its "housing market [had been] wrongfully and illegally manipulated to the economic and social detriment of its citizens." *Appendix 6, 99*.

Plaintiffs based their claims for relief on Sections 1982, 3604, and 3612 of Title 42, United States Code, but those sections do not create a right of action to redress the indirect and generalized injuries alleged by these plaintiffs, who were not good faith purchasers or renters. The language, remedial scheme, and legislative history of the Fair Housing Act show that Sections 3604 and 3612 grant immediate access to the federal courts only to persons whose rights to purchase or rent housing have been affected by discrimination. Likewise, Section 1982 offers no support for plaintiffs' claim.

Finally, even assuming that Congress intended to grant a right of action to persons who have not attempted to purchase or rent housing, these plaintiffs do not have standing to sue under Article III of the United States Constitution.

ARGUMENT

I.

The Individual Plaintiffs And The Village Of Bellwood Are Not Direct Victims Of Discrimination, And Therefore Have No Right Of Action Under Sections 1982, 3604, And 3612, Title 42, United States Code.

The threshold question in this case is one of federal statutory construction: whether Sections 1982, 3604, and 3612 of Title 42, United States Code, grant any right of action to persons who have not attempted to purchase or rent housing, but who claim to have been injured by the effects of discrimination allegedly practiced against others. Both the individual plaintiffs and the Village of Bellwood base their claims for relief under these sections on allegations of indirect injury. The individual plaintiffs have admitted that they never intended to purchase a home (*Appendix 32, 121*), and the Seventh Circuit found that these plaintiffs had stated a claim by alleging that they had been denied the "benefits of living in an integrated society." *Appendix 153, 155*. The court also held that the Village had stated a claim by alleging that it had been injured "by having [its] housing market . . . wrongfully and illegally manipulated." *Appendix 156*.

Section 1982 provides that all citizens "shall have the same right . . . as white citizens . . . to inherit, purchase, lease, sell, hold, and convey real . . . property." 42 U.S.C. § 1982. Section 3604 makes unlawful certain discriminatory practices relating to the sale and rental of housing. 42 U.S.C. § 3604. Section 3612 provides, in relevant part, that "[t]he rights granted by sections 3603, 3604, 3605,

and 3606 of this title may be enforced by civil actions." 42 U.S.C. § 3612(a). On their face, these sections promise relief only to persons who are direct victims of discrimination, in the sense of having been discriminated against in connection with the purchase or rental of housing. The Court of Appeals held, nonetheless, that Sections 3604 and 3612 permitted these plaintiffs to sue, based on their generalized allegation of injury.¹

The Seventh Circuit's holding is unsupported by the language, remedial scheme, or legislative history of the Fair Housing Act. First, the language of Sections 3604 and 3612 shows that Congress intended, in enacting those sections, to provide a remedy only for persons who were directly subjected to discrimination in the purchase or rental of housing. When the remedial provisions of the Fair

¹ Contrary to the statutory language, the Seventh Circuit held that Congress had granted a cause of action, under Sections 3604 and 3612, to persons who are not bona fide purchasers or renters of housing. *Appendix 153, 155, 158*. The Court of Appeals further held that Congress could, consistent with the requirements of Article III, grant a cause of action to persons in the position of these plaintiffs. *Appendix 155, 158*. Both of these conclusions are erroneous. If this Court holds, as a matter of statutory construction, that Congress did not grant any right of action under Sections 3604 and 3612 to persons who are not direct victims of discrimination, it need not reach the Article III question. "The principle is old and deeply embedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative." *United States v. Five Gambling Devices*, 346 U.S. 441, 448 (1953). The Article III question is discussed at pp. 39-52, *infra*. Although the Seventh Circuit found it unnecessary to decide explicitly whether plaintiffs had stated a claim under Section 1982, that question must be addressed if this Court holds that Sections 3604 and 3612 create no cognizable claim in these circumstances.

Housing Act are construed together, they disclose a unitary scheme which rests on public policy considerations which are squarely inconsistent with the Seventh Circuit's view of Section 3612. Second, the legislative history provides no support for the view that Congress intended, in enacting these sections, to take the unusual step of subjecting potential defendants to lawsuits brought by random members of the general public. See *Willard v. City of Cambridge*, 85 Mass. 574 (3 Allen) (1862); Prosser, *Private Actions For Public Nuisance*, 52 Va.L.Rev. 997, 1015 (1966). Indeed, the legislative history does not show that Congress ever contemplated that actions might be brought under Section 3612 by persons who were not direct victims of discrimination in the purchase or rental of housing. Finally, Section 1982 does not grant any right of action to these plaintiffs. Consequently, these plaintiffs have failed to state a claim under Sections 1982, 3604 and 3612.

A. Properly Construed, Sections 3604 and 3612 Do Not Protect The Generalized Rights Asserted By The Individual Plaintiffs Or The Village Of Bellwood.

Section 3612 provides a jurisdictional basis for enforcing certain substantive rights granted by Section 3604 and three other sections of the Fair Housing Act.² Section 3604

² Section 3612 also creates jurisdiction to enforce substantive rights granted by Sections 3603, 3605, and 3606. Section 3603 clarifies certain rights contained in Section 3604. 42 U.S.C. § 3603. Section 3605 prohibits discrimination in financing arrangements, while Section 3606 prohibits discrimination in the provision of brokerage services. 42 U.S.C. §§ 3605, 3606. If this Court were to adopt plaintiffs' view that persons other than direct victims of discrimination have a right to sue under Sections 3604 and 3612, based on a generalized injury, the same conclusion would necessarily follow with respect to the remaining three sections which grant rights that may be enforced under Section 3612.

does not purport to create affirmative rights; that section simply declares that certain practices shall be unlawful. By enacting Section 3612, however, Congress apparently intended to establish that the right not to be subject to the practices proscribed in Section 3604 should be protected as a matter of affirmative right. Neither Section 3604 nor Section 3612 suggests, however, that Congress intended to create an enforceable right in persons other than those who were subjected to discrimination in a good faith attempt to purchase or rent housing. Moreover, neither Section 3604 nor Section 3612 creates any actionable right to be free from any practice apart from those specifically proscribed in Section 3604. There is no basis in the language of these sections for assuming that Congress intended to create the alleged rights upon which plaintiffs base their claim for relief.

None of the five subsections of Section 3604 purports to create an actionable right to live in an integrated society, and none of the subsections grants municipalities an actionable right to protect their housing markets. That Congress did not intend to grant any right of action to municipalities under Section 3612 is particularly clear from that section's title: "Enforcement by private persons." 42 U.S.C. § 3612. A municipal corporation is not a private person.³

³ As Chief Justice Marshall said in *United States v. Fisher*, 1 U.S. 421, 423 (2 Cranch) (1805): "Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration." Inasmuch as the definitional section of the Fair Housing Act does not include governmental units within its definition of "person," it is doubtful that the Village of Bellwood is a "person" entitled to sue under Section 3612. 42 U.S.C. § 3602(d). Compare 42 U.S.C. § 2000e(a). Moreover, even if the Village of Bellwood is a "person" within the meaning of

The Seventh Circuit's decision, upholding plaintiffs' generalized claims of indirect injury, is not supported by the plain language of Sections 3604 and 3612. Moreover, it is inconsistent with a fundamental principle of statutory

(footnote continued)

the Act, it is certainly not a "private person." Municipalities are instrumentalities of government: "These corporations are bodies politic created to administer designated affairs in their respective areas. They exercise delegated powers of government and are usually regarded . . . as subordinate departments, or auxiliaries, or convenient instrumentalities of the state for the purpose of local or municipal rule." 1 E. McQuillin, *The Law of Municipal Corporations* §1.19 (3d ed. 1971). See 1 A. de Tocqueville, *Democracy in America* 62 (Bradley ed. 1945).

Congress obviously intended to limit the applicability of Section 3612 to suits by "private persons" because municipal corporations have traditionally been responsible for housing matters and, as instrumentalities of the state, they have alternative means for achieving fair housing objectives. See McQuillin, *supra*, § 1.74. In Illinois, the legislature has delegated broad powers to its political subdivisions to prohibit discrimination in housing. See Ill.Rev.Stats. ch. 24, § 11-11.1-1 (1977); *id.*, ch. 111, § 5742 (1977). Indeed, the Village of Bellwood has enacted a fair housing ordinance pursuant to this delegated authority. (A copy of that ordinance is attached hereto as *Petitioners' Additional Appendix*). Inasmuch as the sovereign has delegated this power to municipalities, it is difficult to see why they should need a cause of action under Section 3612 to promote their governmental objectives. Congress clearly recognized this when it enacted Section 3612 to provide for "Enforcement by private persons." It could be argued, of course, that a municipal corporation might be a "person aggrieved" within the meaning of Section 3610 and that it might consequently, be entitled to sue under that section. That question, however, is not before this Court. Moreover, even if a municipality were entitled to sue under Section 3610, it would not necessarily follow that it must be able to sue as a "private person" under Section 3612. Indeed, that fact would further underscore the significant differences between the remedial provisions of the two sections. See pp. 19-29, *infra*.

construction: that the sections of a statute must be construed "in connection with every other . . . section so as to produce a harmonious whole." 2A C. Sands, *Sutherland Statutory Construction* § 46.05, p. 56 (4th ed. 1973).⁴ In this case, the Court of Appeals recognized that its construction of Section 3612 ignored the relationship of that section to Section 3610. Nonetheless, the Seventh Circuit brushed aside this long-standing principle by suggesting only that its construction of Section 3612 "may to some degree seem to offend a judicial penchant for consistency." *Appendix 162*.

When Sections 3610 and 3612 are read in concert, they demonstrate a comprehensive remedial scheme which is unambiguous in its public policy. Section 3610, which permits actions to be brought by some indirect victims of discrimination, requires compliance with important preliminary procedures before an action may be brought in federal court. Section 3612, on the other hand, creates immediate and unconditional jurisdiction in the federal courts for persons who, as purchasers and renters, are direct victims of discrimination.

Section 3610 establishes a well-considered procedure for protecting the rights of any "person aggrieved," expan-

⁴ This principle of construction is firmly established in the cases of this Court. In *Cherokee Inter-marriage Cases*, 203 U.S. 76, 89 (1906), Chief Justice Fuller said that "the language of a statute is to be interpreted in the light of the particular matter in hand and the object sought to be accomplished as manifested by other parts of the act, and the words used may be qualified by their surroundings and connections." Justice Cardozo has also noted that "the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view." *Panama Refining Co. v. Ryan*, 293 U.S. 388, 439 (1935) (Cardozo, J., dissenting). See also Frankfurter, *Some Reflections on The Reading Of Statutes*, 47 Colum.L.Rev. 527, 537-38 (1947).

sively defined in that section as "[a]ny person who claims to have been injured . . . or who believes that he will be irrevocably injured by a discriminatory housing practice." 42 U.S.C. § 3610(d). The Court had occasion to construe Section 3610 in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). In *Trafficante*, this Court held that certain tenants of an apartment complex were "persons aggrieved," with standing to challenge their landlord's discriminatory rental practices, even though they were not themselves objects of discrimination, because those practices deprived them of the benefits of living in an integrated community. The Court held that "the words ['person aggrieved'] showed 'a congressional intention to define standing as broadly as is permitted by Article III. . . insofar as tenants of the same housing unit that is charged with discrimination are concerned.'" *Id.*, 209.

While Section 3610 provides for broad standing, it does not provide for immediate access to the federal courts. A putative plaintiff must first allow the Secretary of Housing and Urban Development an opportunity to eliminate the alleged discriminatory practice by informal means. 42 U.S.C. § 3610(a). Moreover, if state or local governments provide rights and remedies substantially equivalent to those provided by federal law, the Secretary must allow them an opportunity to resolve the dispute. *Id.*, § 3610(d). In either event, thirty days must be allowed for conciliation efforts before a suit may be brought. *Id.* Finally, no federal court action may ever be brought under Section 3610 if substantially equivalent judicial remedies are available at state law. *Id.*

Section 3610 reflects a strong commitment by Congress to the use of federal administrative remedies and the development of effective state and local remedies. In Section 3610, Congress placed primary emphasis on con-

ciliation, rather than litigation, to enforce the Fair Housing Act. At the threshold, "persons aggrieved" must avail themselves of the informal remedies provided by HUD. Moreover, by requiring exhaustion of state and local remedies, Congress recognized the important role that state and local officials have traditionally enjoyed in housing matters. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); 1 E. McQuillin, *The Law Of Municipal Corporations* § 1.74 (3d ed. 1971). Congress wished to take advantage of state and local concern by making primary resort to state and local authorities an integral part of the statutory scheme. In *Hunter v. Erickson*, 393 U.S. 385, 388-89 (1969) (footnotes omitted), this Court analyzed the purposes supporting this statutory exhaustion requirement:

The 1968 Civil Rights Act specifically preserves and defers to local fair housing laws, and the 1866 Civil Rights Act . . . should be read together with the later statute on the same subject . . . so as not to pre-empt the local legislation which the far more detailed Act of 1968 so explicitly preserves. . . . Unlike state or federal programs, the [municipal] ordinance brings local people together for conciliation and persuasion by and before a local tribunal. It is precisely this sort of very localized solution to which Congress meant to defer.

Given the magnitude of the problem of discrimination in housing, Congress wisely decided that our national housing goals could not be attained solely through federal court litigation, but that voluntary compliance and increased efforts by state and local officials were also necessary. In summary, the central purpose of Section 3610 is two-fold: (1) to effectuate the policies of the Fair Housing Act without costly litigation, and (2) to encourage the enactment and enforcement of state and local fair housing laws.

The remedial provisions of Section 3612 are different from those of Section 3610 in two important respects. First, in contrast to Section 3610's purposeful exhaustion

mechanism, Section 3612 provides immediate access to the federal courts. Second, the two sections use significantly different language to describe the persons within their protection. While Section 3610 grants a right of action to any "person aggrieved," the focus of Section 3612 is considerably more narrow: it provides only that certain enumerated rights "may be enforced by civil actions." 42 U.S.C. § 3612(a). In choosing not to use the broad language of Section 3610 in Section 3612, Congress had a more limited object in mind; namely, that Section 3612 would provide a remedy for only those persons who had been discriminated against while attempting to purchase or rent housing.⁵

The Seventh Circuit failed to consider whether the divergent language of these sections reflects different underlying policies. Instead, the court simply held that these plaintiffs had stated a claim under Section 3612 because this Court had previously held that tenants of an apartment complex had standing under Section 3610 to complain that they had lost the benefits of living in an integrated community. See *Trafficante, supra*, 208. The Seventh Circuit's holding ignores the presence in Section 3610 of the phrase "person aggrieved," which signifies

⁵ Of the four sections which grant rights enforceable under Section 3612, the plaintiffs herein allege a violation of only Section 3604, which proscribes certain discriminatory practices in the "sale or rental" of housing. 42 U.S.C. § 3604. Because the individual plaintiffs were not bona fide homeseekers, they could not have been discriminated against in the sale or rental of housing. Most simply, plaintiffs' allegations of racial steering are an attempt to enforce the Section 3604 rights of others, which they believe to have been violated. As a matter of statutory construction, however, Section 3612 does not grant a right of action to persons whose Section 3604 rights have not been violated, even if those persons may have been injured in some generalized and attenuated sense by a violation of the Section 3604 rights of others.

the broadest standing constitutionally possible. That language is not contained in Section 3612.

In *Associates Industries v. Ickes*, 134 F.2d 694, 705 (2d Cir.), *vacated as moot*, 320 U.S. 707 (1943), Judge Frank discussed the significance of the phrase "person aggrieved" in a slightly different context:

[The Supreme Court has] construed the "person aggrieved" review provision as a constitutionally valid statute authorizing a class of "persons aggrieved" to bring suit in a Court of Appeals to prevent alleged unlawful official action in order to vindicate the public interest, although no personal substantive interest of such persons had been or would be invaded. Although one threatened with financial loss through increased competition resulting from unlawful action of an official cannot, solely on that account, make the proper showing to maintain a suit against the official, absent such a statute, yet the "person aggrieved" statute gives the needed authority to do so to one who comes within that description.

In Judge Frank's view, the "person aggrieved" language is unique because it allows a class of persons to bring suit in circumstances where the nature of their injury would not otherwise permit them to do so.⁶ Accord *E.E.O.C. v. Bailey Co.*, 563 F.2d 439, 454 (6th Cir. 1977),

⁶ The phrase "person aggrieved" has traditionally been used to create an expansive right of access to the courts. *American Power & Light Co. v. S.E.C.*, 325 U.S. 385, 390-91 (1945); *F.C.C. v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940); *Scamwell Laboratories, Inc. v. Shaffer*, 424 F.2d 859, 862-65 (D.C. Cir. 1970). Consequently, this language has a well-accepted meaning in American law. *Office of Communication of the United Church of Christ v. F.C.C.*, 359 F.2d 994, 1002 (D.C. Cir. 1966) (Burger, J.). When words with a long-established meaning are used in a statute, "they are presumed to have been used in that sense unless the context compels to the contrary." *Lorillard v. Pons*, U.S., 98 S.Ct. 866, 871 (1978), quoting, *Standard Oil Co. v. United States*, 221 U.S. 1, 59 (1911).

cert. denied, U.S., 98 S.Ct. 1468 (1978). Because this grant of standing is unique, it should not be implied in a statute that does not provide for it in its terms. Certainly, it should not be implied where, as here, Congress has specifically included that language in a companion section of the same act.

Congress's purpose in including the "person aggrieved" provision in Section 3610, but not in Section 3612, is clear. Given Section 3610's emphasis on voluntary compliance, conciliation, and local remedies, Congress clearly believed that the nation's fair housing goals would be well-served by allowing broad standing under that section. The remedies provided by Section 3612, however, are federal judicial remedies. Because of the cost and inconvenience involved in defending federal court litigation, Congress recognized the need for restricting immediate judicial access to persons whose rights had been violated. See pp. 29-34, *infra*. The Ninth Circuit has recognized that these differences in statutory coverage must be evaluated in light of the two sections' distinctive remedial schemes:

The Supreme Court has recently characterized its earlier interpretation of section 3610 in *Trafficante* as giving residents of housing facilities "an actionable right to be free from the adverse consequences to them of racially discriminatory practices directed at and immediately harmful to others." *Warth v. Seldin*, *supra*, 422 U.S. at 513, 95 S.Ct. at 2212, 45 L.Ed.2d at 363. The narrower language of section 3612, on the other hand, precludes suit by such individuals. By permitting suit only to enforce certain enumerated rights, that section provides access to the courts only to those who are granted rights by the Act, namely, those who are the direct objects of the practices it makes unlawful. Section 3604 grants rights not to be discriminated against in the sale or rental of housing. . . . Although the complaint alleges that racial steering is a practice which violates section 3604, we conclude that only the

direct victims of such a practice have a cause of action under section 3612.

While . . . section [3610] provides a remedy for a broad spectrum of individuals aggrieved by discrimination, the judicial system is not the initial forum for relief and thus is protected from a potential excess of litigation. Section 3612 provides preferential access to judicial processes as necessary for those individuals who are the primary victims of the illegal acts of discrimination. Such persons are likely to suffer grave and immediate harm and judicial relief may be necessary for the full vindication of their rights.

TOPIC v. Circle Realty, 532 F.2d 1273, 1275-76 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976).⁷

⁷ In *TOPIC*, *supra*, an association dedicated to open housing, and three of its members, alleged that certain real estate brokers had engaged in racial steering in violation of Section 3604. They brought suit under Section 3612. The individual plaintiffs were not actual homeseekers, and they had suffered no direct injury due to the alleged racial steering. Instead, they alleged that they had been injured indirectly by being "deprived of the important social and professional benefits of living in an integrated community." *Id.*, 1274. They sought to assure the justiciability of their claim by describing their alleged injury in the same words used by the plaintiffs in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). The Ninth Circuit held, however, that this Court's holding in *Trafficante* was inapposite because it applied only to cases brought under Section 3610, which created a remedial scheme entirely dissimilar in structure and purpose from that established by Section 3612.

The Seventh Circuit's decision herein directly conflicts with the Ninth Circuit's decision in *TOPIC*. Apart from their holdings, the cases are indistinguishable in all material respects. In both cases, persons who were not purchasers or renters of housing brought suit, under Section 3612, claiming that they had been denied the right to live in an integrated community or society. The Seventh Circuit recognized that the *TOPIC* decision was "not without some plausibility," but concluded that that case was wrongly decided. *Appendix 159*.

The Seventh Circuit's construction of Section 3612 precludes implementation of the policies which Congress sought to further by enacting Section 3610: "To accept [the] argument that sections 3610 and 3612 extend to identical classes of plaintiffs would destroy this statutory pattern, for the procedural prerequisites of section 3610 could then be avoided in every case." *TOPIC, supra*, 1276. Consequently, persons who are not purchasers or renters of housing must be remitted to their Section 3610 remedies. The Ninth Circuit's decision is well-grounded in an important practical consideration: the systematic circumvention of Section 3610 remedies will frustrate the policy goals underlying that section, without significantly advancing any competing interests, by encouraging the atrophy of both federal conciliation procedures and state and local remedies.⁸ Systematic circumvention of administrative remedies is undesirable because it is likely to cause a "dislocation of the administrative scheme." L. Jaffe, *Judicial Control of Administrative Action* 452 (1965). See also Comment, *Exhaustion Of State Administrative Remedies In Section 1983 Cases*, 41 U.Chi.L.Rev. 537, 541 n.20 (1974). Moreover, the potential for serious harassment of innocent parties is greatly increased if the restraining influ-

⁸ The *TOPIC* court's construction also conserves scarce judicial resources by limiting immediate judicial relief to direct victims of discrimination, thereby increasing the likelihood that timely judicial relief will be afforded to those persons. If an individual is denied the opportunity to purchase or lease a particular dwelling because of discrimination, he will need extraordinary relief to guarantee that the dwelling he seeks is not sold or leased before his claim can be heard. It was for this reason that Congress provided for expedited disposition of these cases. 42 U.S.C. § 3614. By limiting immediate access to the courts to good faith purchasers and renters, the *TOPIC* court's construction increases the likelihood that that relief will be available when necessary. The *TOPIC* court's construction thus furthers judicial economy as well as an important purpose of the Fair Housing Act.

uence of Section 3610 procedures is supplanted by immediate federal litigation in every case. If Section 3612 is construed to permit persons in the position of these plaintiffs to bring suit in federal court the policies underlying Section 3610 will be seriously undercut.

The Seventh Circuit also apparently believed that enforcement of the Fair Housing Act would be facilitated by permitting parties to assert the rights of others. That view is incorrect for two reasons. First, it is a fundamental principle⁹ of American law that litigants do not have standing to assert the rights of third parties who may

⁹ While Congress could supplant this general rule by enacting specific legislation, it has not done so in Section 3612. Where Congress has not specifically demonstrated its intention to overrule an established principle of the common law, statutes must be construed against the background of existing common law principles. See *Carey v. Phipps*, U.S., 98 S.Ct. 1042 (1978); 2A C. Sands, *Sutherland Statutory Construction* § 50.02 (4th ed. 1973). Professor Wellington has noted that, "The court should assume responsibility by imposing on the legislature a clear statement rule: to depart from an established principle, the legislature must speak plainly." Wellington, *Common Law Rules and Constitutional Double Standards: Some Notes On Adjudication*, 83 Yale L.J. 221, 264 (1973) (emphasis in original). Following this principle of statutory construction, the Court has held, for instance, that the Civil Rights Acts must be construed against the background of common law tort liability. *Monroe v. Pape*, 365 U.S. 167, 187 (1961). While the plain language of 42 U.S.C. § 1983 would seem to impose strict liability on state and local officials, the Court has held that the common law doctrine of official immunity applies in Section 1983 actions because Congress has not expressly said otherwise. *Stump v. Sparkman*, U.S., 98 S.Ct. 1099 (1978); *Wood v. Strickland*, 420 U.S. 308 (1975); *Pierson v. Ray*, 386 U.S. 547 (1967). The same principle of construction compels the conclusion in this case that Section 3612 should not be construed to provide a cause of action for persons who seek to vindicate the rights of others.

have been injured by unlawful conduct. *Alderman v. United States*, 394 U.S. 176 (1969). See also *Barrows v. Jackson*, 346 U.S. 249, 255-57 (1953); *Tileston v. Ullman*, 318 U.S. 44 (1943). Even in cases involving fundamental constitutional rights, such as those protected by the Fourth Amendment, this Court has followed the principle that persons may not assert the rights of others: "The established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence." *Alderman, supra*, 171-72 (1969). The need for enforcing the policy of the Fair Housing Act cannot constitute a more compelling justification for third-party standing than can the need for enforcing fundamental constitutional guarantees. Moreover, while certain goals of the Fair Housing Act might be furthered by third-party standing, equally important goals will certainly be frustrated. See pp. 20-21, 24-27, *supra*.

Section 3612 must be construed as a part of the overall scheme established by the Fair Housing Act's two private enforcement provisions. On the one hand, Section 3610 grants standing to any "person aggrieved." That language creates a special basis for standing, which is as broad as constitutionally permissible. Section 3610, however, also requires exhaustion of federal conciliation procedures as well as viable state and local remedies. The purposes of these prerequisites are to facilitate enforcement of the Act without federal court litigation, and to encourage state and local participation in the attainment of national fair housing goals. Charges raised by per-

sons who are not themselves direct victims of discrimination present the ideal circumstances for informal conciliation by state and federal officials. Section 3612, on the other hand, permits immediate access to the coercive remedies of the courts. Unlike Section 3610, however, Section 3612 does not purport to grant relief to any "person aggrieved." Consequently, Section 3612 must be construed as providing a cause of action only to persons who have been directly discriminated against in the purchase or rental of housing. This construction preserves the viability of Section 3610, and it imputes to Congress the rationality which legislative bodies must be presumed to possess. No other construction is consistent with the remedial scheme established by Congress.

B. The Legislative History Of The Fair Housing Act Does Not Support The Seventh Circuit's Construction Of Sections 3604 And 3612.

The Court of Appeals was correct when it recognized that its construction of Section 3612 "may to some degree seem to offend a judicial penchant for consistency [in that it implies] that Congress has, in the same act, established an administrative remedy and authorized plaintiffs, at their discretion to bypass it." *Appendix* 162. By relying on certain isolated remarks in the Act's legislative history, however, the Court of Appeals persisted in its view that the two sections are coextensive. *Appendix* 161-63. The Seventh Circuit's reliance on these remarks is misplaced for two reasons. First, the remarks are not themselves convincing support for the court's construction. Second, the legislative history contains other materials

which are at least equally, if not more persuasive in support of the contrary view.¹⁰

The Seventh Circuit was apparently influenced by certain statements of Mr. Celler and Mr. Ford, both of whom described the remedial provisions of the two sections as alternatives. *Appendix* 161-62. Those statements are partially correct, of course, because the two sections do provide alternative remedies for persons who have been discriminated against in the purchase or rental of housing. On the other hand, the legislative history contains no evidence that any legislator ever suggested that persons other than purchasers and renters might be entitled to sue under the Act. If anything, the Senate debate concerning the "bona fide offer" amendment to Section 3604 suggests that Congress had no intention of permitting such suits by indirect victims of housing discrimination. See pp. 31-34, *infra*. The authority of the isolated remarks quoted by the Seventh Circuit is therefore suspect because those remarks were undoubtedly based on the assumption that only purchasers and renters could sue under the Act. That assumption is exactly contrary to the court's use of those remarks.

In some respects, of course, the legislative history of the Fair Housing Act is admittedly incomplete, as Justice

¹⁰ Given the nature of the legislative process, it is hardly surprising that legislative history frequently supports contradictory constructions of an act. See, e.g., *S.E.C. v. Robert Collier & Co.*, 76 F.2d 939, 941 (2d Cir. 1935) (L. Hand, J.). When the legislative history is ambiguous, courts "must look primarily to the statutes themselves to find the legislative intent." *Citizens To Preserve Overton Park v. Volpe*, 401 U.S. 402, 412 n.29 (1971). In this case, the statute itself clearly supports defendants' construction. See pp. 16-29, *supra*.

Douglas suggested when he observed, in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 210 (1972), that "[t]he legislative history of the Act is not too helpful." In at least one respect, however, the legislative history is helpful: it demonstrates an abiding concern that the Act should not be used as an engine of harassment.

During the Senate's consideration of Section 3604, Senator Allott proposed an amendment to the section, inserting the phrase "after the making of a bona fide offer." 114 Cong.Rec. 5515 (1968). The debate concerning that amendment, which was ultimately included in the final version of Section 3604, shows that Congress was concerned with protecting potential defendants from harassment as well as providing effective relief for purchasers and renters whose rights were affected by discrimination. The colloquy between Senator Mondale, the draftsman of the Act, and Senator Allott, the proponent of the amendment, is instructive:

Mr. Allott. Mr. President, this amendment . . . would make the penalty provisions of the proposed legislation applicable only where there is a refusal to sell or rent after a bona fide offer has been made.

In other words, I want to negate any possibility of undue harassment or pressure upon a seller or lessor. Upon the basis of sheer equity alone, a party should not be placed in jeopardy or found guilty of a violation of this act merely for refusing to sell or rent when the person who approached him was not in a position to make or did not make a bona fide offer.

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Mr. Mondale. As I understand the intent of the amendment, . . . it is this: When a person really wants to rent a particular leasehold or when he wants to buy

a particular piece of property, he is clearly within the protection of this measure. But when the offer is in effect a phony one, when he has no intention, when it is not a good safe offer, because he is on a lark or whatever, when it is a contrived sort of situation with which he would never go through, he would not be protected. Is that the distinction that the Senator seeks to make?

Mr. Allott. The Senator has stated it very clearly and plainly. That is the distinction that is sought to be made.

* * * * *

Mr. Mondale. I am also correct in my understanding that this determination can be made on the basis of the facts in each instance, and it has no relationship to underlying statute of fraud laws in particular States?

Mr. Allott. No, I do not believe it would necessarily have to go so far as a binding contract. But if it was not in fact a bona fide offer, with the capability of going through with the contract, then the proposed seller or lessor, would not be in a bind by reason of it. So I believe that this amendment would clear up a necessary feature.

Mr. Mondale. When the Senator uses the word "capability," he means that the offeror had no intention of going through the bargain, that it was not a bona fide good faith offer to rent or buy?

Mr. Allott. That is correct. And I believe the words "bona fide" are so well established throughout the body of the law that we need not define them further.

Mr. Mondale. We have no objection.

Id.

Immediately following this colloquy, Senator Scott concurred in the amendment stating that "We should fore-

close any area in which there might be an opportunity for agitation for agitation's sake, or harassment, or general orneriness [because] this is an area in which there might be a totally phony or false approach, without any intention to consummate a sale." *Id.*

Senator Cooper also approved of the amendment because, "[w]ithout its adoption, numerous situations might arise in which a renter or an owner could be prosecuted and could be caused all kinds of trouble, when the person offering to rent or to buy had no intention of renting or buying and had no capacity to do so." *Id.* Senator Cooper further stated that:

The bill before us would protect a person who is discriminated against. It should also protect owners who are giving up some of the privileges they have held throughout the years. They should not be subjected to actions by capricious non-bona-fide offerors.

Id.

The Senate's discussion of the Allott Amendment shows that Congress wished to avoid the significant potential for abuse which lay in the powerful remedy provided by Sections 3604 and 3612. Congress also recognized the need for protecting potential defendants from contrived litigation.¹¹ Because of that possibility, Congress consciously

¹¹ Shortly after the enactment of the Fair Housing Act, a commentator assessed the meaning of the legislative history: "The civil rights acts by their very nature deal with personal relations. Because of the possibilities of animosity, safeguards against use of the statutory causes of action solely for purposes of harassment or nuisance are desirable. . . . Title VIII attacks the problems. . . . First, if the complaint is filed with the Secretary, he may refuse to act on it if, in his judgment, it is without merit. The second and more important device is the bona fide purchaser rule. If the complainant would not have been ready, willing, and able to per-

limited the circumstances in which an action could be brought under these sections. The Seventh Circuit's expansive construction of Sections 3604 and 3612 is simply inconsistent with the concerns which moved Congress to insert the "bona fide offer" requirement in Section 3604. The Seventh Circuit's construction, which invests the public at large with a roving commission to bring suits under Section 3612, is inconsistent with the reasoning of the Allott Amendment debates, which constitute the only relevant legislative history on the subject. The decision of the Court of Appeals is contrary to the legislative history.¹²

(footnote continued)

form the contract, had his offer been accepted, he cannot bring an action under Title VIII." Note, *Jones v. Mayer: The Thirteenth Amendment And The Federal Anti-Discrimination Laws*, 69 Colum. L.Rev. 1019, 1053 (1969) (footnotes omitted). The same commentator also noted the problems of harassment by organizational plaintiffs: "The bona fide purchaser restriction . . . would probably forbid organizational suits per se, unless the organization could find or was willing to finance a bona fide purchaser. . . . The dangers of harassment . . . exist in terms of organizational plaintiffs to at least the same degree as individual plaintiffs. Though organizations may find temporary avenues in Section 1982, it is likely either that standing will not be extended to organizational plaintiffs, or that Section 1982 will be interpreted to allow standing only to the same extent as Title VIII, in order to avoid gaps for harassment." *Id.*, 1054. Analytically, there is no difference, of course, between organizational plaintiffs and those who base their right to sue on an alleged infringement of their generalized right to live in an integrated society. The same potential for harassment exists in both cases.

¹² The Court of Appeals was also persuaded that plaintiffs had standing because of what it believed to be HUD's interpretation of the Act. *Appendix* 162. The court's reliance on 24 C.F.R. § 105.16 is misplaced, however, because that regulation concerns only Section 3610 procedures; it does not purport to construe Section 3612. Even if that regulation did purport to construe Section 3612, however, the agency's construction of the statute could not diminish this Court's

(footnote continued)

C. The Individual Plaintiffs And The Village Of Bellwood Have Failed To State A Claim Under Section 1982.

Section 1982 provides that all citizens of the United States "shall have the same right . . . as white citizens . . . to inherit, purchase, sell, hold, and convey real . . . property." 42 U.S.C. § 1982. The individual plaintiffs have alleged that defendants violated their rights under Section 1982 by depriving them "of the social and professional benefits of living in an integrated society." *Appendix* 6, 99. Likewise, the Village of Bellwood has alleged that defendants violated its rights under Section 1982 by causing its "housing market [to be] wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village." *Appendix* 6, 99.

The language of Section 1982 provides no basis for holding that Congress intended, in enacting that section, to create a cause of action to protect the generalized rights

(footnote continued)

responsibility to interpret the laws. Moreover, as this Court has emphasized, an administrative interpretation of a statute must be thoroughly reasoned and possess some "power to persuade" to be worthy of judicial deference. *Skidmore v. Swift*, 323 U.S. 134, 140 (1944). Accord *S.E.C. v. Sloan*, U.S., 98 S.Ct. 1702 (1978); *Adamo Wrecking Co. v. United States*, 434 U.S. 275 (1978). No such reasoned interpretation has been undertaken by HUD. More important, however, an administrative interpretation of Section 3612 would have little value because the questions raised herein are not questions within the expertise of the agency. See *McKart v. United States*, 395 U.S. 185 (1969). The determination of standing is a uniquely judicial task, in which this Court may not "abdicate its ultimate responsibility to construe the language employed by Congress." *Zuber v. Allen*, 396 U.S. 168, 193 (1969).

asserted by these plaintiffs. First, the rights granted by Section 1982 are wholly personal in nature: "In order for a plaintiff to predicate an action on [Section 1982], he must have been deprived of a right which, under similar circumstances, would have been accorded to a person of a different race." *Schetter v. Heim*, 300 F. Supp. 1070, 1073 (E.D. Wis. 1969). In this case, plaintiffs' claim of injury is alleged to rest on a deprivation of the Section 1982 rights of others. It is undisputed that these plaintiffs were not themselves denied the right to "purchase," "sell," or "hold" real property. See *Sims v. Order of United Commercial Travelers of America*, 343 F. Supp. 112, 115-16 (D. Mass. 1972).

An analogous situation was presented in *Warth v. Seldin*, 422 U.S. 490 (1975). In *Warth*, one group of plaintiffs, who challenged a suburban zoning ordinance on behalf of the suburb's residents, also alleged that they had been denied the benefits of living in an integrated community. Although relying on *Trafficante, supra*, the *Warth* plaintiffs did not bring their action under the Fair Housing Act. Instead, they sued under Sections 1981, 1982, and 1983 of Title 42, United States Code. The Court rejected plaintiffs' claims, noting that these sections did not grant any broad statutory right such as that provided by Section 3610 of the Fair Housing Act: "[T]heir complaint is that they have been harmed indirectly by the exclusion of others. This is an attempt to raise putative rights of third parties, and none of the exceptions that allow such claims is present here." *Warth, supra*, 514 (footnote omitted). See also *Cornelius v. City of Parma*, 374 F. Supp. 730, 742-43 (N.D. Ohio 1974), *remanded without opinion*, 521 F.2d 1401 (6th Cir. 1975), *cert. denied*, 424 U.S. 955 (1976).

Second, these plaintiffs seek to enlarge the doctrinal scope of Section 1982 beyond the bounds which have been set in this Court's earlier decisions. In *Hunter v. Erick-*

son, 393 U.S. 385, 388 (1969), the Court held that Section 1982 should not be expansively construed so as to defeat the more detailed provisions of the Fair Housing Act of 1968, particularly with respect to its policy of preserving and deferring to local fair housing legislation. Likewise, in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413-14 (1968) (footnotes omitted), the Court emphasized that Section 1982 is a limited statute, not an omnibus fair housing law:

Whatever else it may be, 42 U.S.C. § 1982 is not a comprehensive open housing law. In sharp contrast to the Fair Housing Title (Title VIII) of the Civil Rights Act of 1968 . . . the statute in this case deals only with racial discrimination and does not address itself to discrimination on grounds of religion or national origin. It does not deal specifically with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling. It does not prohibit advertising or other representations that indicate discriminatory preferences. It does not refer explicitly to discrimination in financing arrangements or in the provision of brokerage services. It does not empower a federal administrative agency to assist aggrieved parties. It makes no provision for intervention by the Attorney General. And, although it can be enforced by injunction, it contains no provision expressly authorizing a federal court to order the payment of damages.

The expansion of Section 1982 necessary to accommodate plaintiffs' claims would certainly transform that section into an omnibus fair housing law, supplanting the well-considered remedial scheme established by the Fair Housing Act of 1968. That transformation of Section 1982 would contradict this Court's prior holding that the two

statutes should be construed in concert, to give effect to the more detailed provisions of the later statute.¹³ See *Hunter, supra*, 388. Neither the Village of Bellwood nor the individual plaintiffs have stated an actionable claim under Section 1982.

The decision of the Court of Appeals for the Seventh Circuit has no basis in the language of Sections 1982, 3604, and 3612 of Title 42, United States Code. That decision is also inconsistent with the public policy, remedial structure, and legislative history of the Fair Housing Act. For these reasons, the judgment of the Court of Appeals should be reversed.

¹³ Recognition of plaintiffs' claims requires two significant expansions of Section 1982, as to both the standing of persons who are not direct victims of discrimination and the scope of the substantive rights cognizable under this section. There is no basis in the language of Section 1982 for either of these assumptions, and that basis may not be supplied by statutory construction. *Iselin v. United States*, 270 U.S. 245, 251 (1926) (Brandeis, J.). Justice Frankfurter has succinctly stated this principle: "As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. . . . A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation." Frankfurter, *Some Reflections On the Reading Of Statutes*, 47 Colum.L.Rev. 527, 533 (1947). The judicial revision of Section 1982 requested by these plaintiffs is simply inconsistent with this Court's decision in *Hunter v. Erickson*, 393 U.S. 385 (1969).

II.

PLAINTIFFS LACK STANDING TO SUE UNDER ARTICLE III OF THE UNITED STATES CONSTITUTION BECAUSE THE INJURY THEY ALLEGE IS TOO GENERALIZED TO MEET CONSTITUTIONAL REQUIREMENTS, AND IT IS RELATED TO DEFENDANTS' ALLEGED ACTIVITIES ONLY IN THE MOST ATTENUATED SENSE.

The purpose of Congress in enacting the Fair Housing Act of 1968 was "to provide, *within constitutional limitations*, for fair housing throughout the United States." 42 U.S.C. § 3601 (emphasis added). Foremost among constitutional limitations is the "case or controversy" requirement imposed by Article III. U.S. Const. Art. III. "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal court jurisdiction to actual cases or controversies." *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 37 (1976).

A central component of the case or controversy limitation is the concept of standing to sue: the requirement that a party possess a sufficient stake in the outcome of a lawsuit "to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (emphasis in original).¹⁴

¹⁴ In addition to its constitutional dimension, the standing doctrine reflects a judicial concern for "the proper—and properly limited—role of the courts in a democratic society." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). This judicial concern manifests itself in the so-called prudential limitations on the exercise of federal court jurisdiction which, although "closely related" to the constitutional case or controversy requirement, are "essentially matters of judicial

(footnote continued)

In exercising its legislative power, Congress may enact laws which create legal rights unknown at common law. At the same time, however, the enforcement of such rights in the federal courts remains subject to constitutional standing requirements. Even if this Court should construe Section 3612 as granting a cause of action to persons who are not prospective purchasers or renters of housing, which it does not, the Court must still determine whether these plaintiffs have standing, in a constitutional sense, to maintain this action. This Court's prior decisions show that these plaintiffs' allegations are insufficient to meet the requirements embodied in Article III. Because the Seventh Circuit incorrectly held that these plaintiffs had met the requirements of Article III, its decision must be reversed.

A. Because Plaintiffs Lack A Sufficiently Concrete And Personal Stake In The Outcome Of This Lawsuit, They Have No Standing To Sue.

The constitutional standing requirement is two-fold. First, a plaintiff must demonstrate that he has personally suffered a concrete injury, or that he will suffer such an injury unless judicial relief is secured. *Association of*

(footnote continued)

self-governance." *Id.*, 500. See S. Thio, *Locus Standi and Judicial Review* 3 (1971); 1 A. de Tocqueville, *Democracy In America* 106-07 (Bradley ed. 1945).

This Court has noted that the standing doctrine "has become a blend of constitutional requirements and policy considerations," *Flast v. Cohen*, 392 U.S. 83, 97 (1968), and that the Court's self-imposed prudential limitations are "not always clearly distinguished from the constitutional limitation." *Barrows v. Jackson*, 346 U.S. 249, 255 (1953). Because the constitutional and prudential strands of the standing requirement are so interrelated, this brief will address both aspects of the standing doctrine together.

Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 152 (1970). Second, a plaintiff must demonstrate a plausible causal connection between the alleged injury and the defendant's activities so that the relief he seeks will adequately redress the injury that he has suffered. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 37 (1976); *Warth v. Seldin*, 422 U.S. 490, 505 (1975); *Linda R. S. v. Richard D.*, 410 U.S. 614, 619 (1973). A plaintiff who is unable to satisfy both of these requirements does not possess that personal and substantial stake in the outcome of the lawsuit necessary to confer standing. The Seventh Circuit's decision is inconsistent with the limitations of Article III because the injury which these plaintiffs assert is merely a generalized injury, and it is causally related to defendants' alleged activities only in the most attenuated sense. Plaintiffs' allegations, even if proved to be true, would be constitutionally insufficient to establish a case or controversy.

The individual plaintiffs alleged in their complaint that they had suffered an injury because defendants' alleged racial steering of homeseekers "deprived [plaintiffs] of the social and professional benefits of living in an integrated society." *Appendix* 6, 99.¹⁵ The Village of Bellwood also alleged that it had been injured because the alleged practice of racial steering had caused "the housing market in [that] village [to be] wrongfully and illegally

¹⁵ Initially, the individual plaintiffs also alleged that they were "denied their right to select housing without regard to race." *Appendix* 6, 99. During discovery, however, the individual plaintiffs admitted that they had not been injured in this manner because they had acted only as testers in the investigatory stage of this litigation, and that they never had any intention of purchasing a home. *Appendix* 27, 32, 116, 121. Moreover, at the time that summary judgment was granted, plaintiffs had failed to support their generalized allegations by identifying any bona fide homeseeker whom they believed to have been injured through racial steering. *Appendix* 28, 117.

manipulated to the economic and social detriment of the citizens of [the] Village." *Appendix* 6, 99. The complaint clearly shows that the Village's claim rests on an assumption, unsupported in law, that it may sue derivatively to vindicate the rights of its residents. Contrary to the conclusion reached by the Court of Appeals (*Appendix* 156), the basis of the Village's claim is merely derivative, and it is virtually identical to those of the individual plaintiffs; the justiciability of those claims under Article III must stand or fall together.¹⁶

In determining whether a plaintiff has satisfied constitutional standing requirements, a court must first determine whether the plaintiff has sustained an injury in fact. A putative plaintiff must demonstrate that he has personally suffered an injury that is actual, particular, and concrete, rather than one that is merely abstract. *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974). Unless a plaintiff has suffered a sufficient injury, he lacks the personal stake in the outcome of the lawsuit necessary to support a case or controversy. "Concrete injury . . . adds the essential dimension of specificity to the dispute by requiring that

¹⁶ While the language of the complaint unequivocally demonstrates the merely derivative nature of the injury alleged by the Village, the Seventh Circuit generously construed the Village's complaint as alleging the existence of a particularized injury to the Village itself, as a governmental unit. The Seventh Circuit construed the complaint as suggesting that racial steering could result in "unnaturally rapid population turnovers," which could in turn adversely affect the municipal tax base as well as augment unnamed municipal problems requiring additional revenues. *Appendix* 156. Assuming that the complaint could properly be construed in that manner, however, the Village still lacks standing to sue in the circumstances of this case because of the attenuated nature of the causal connection between the Village's alleged injury and defendants' alleged activities. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 37 (1976). See pp. 46-50, *infra*.

the complaining party have suffered a particular injury caused by the action challenged as unlawful." *Schlesinger v. Reservists Committee To Stop the War*, 418 U.S. 208, 220-21 (1974). Consequently, an injury shared in common by all members of the public is usually insufficient to confer standing: "a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens . . . normally does not warrant exercise of jurisdiction." *Warth, supra*, 499.

The claim asserted by the individual plaintiffs—that they have been denied the benefits of living in an integrated society—is precisely the type of speculative and generalized injury which this Court has previously found to be beyond the ken of Article III. The Court's decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), does not create an exception to that principle.¹⁷

In *Trafficante*, the plaintiffs were residents of a single apartment complex, which they characterized as a "community;" they complained that their landlord had denied them the benefits of interracial association by discriminating against prospective tenants on the basis of race. While the Court held that those plaintiffs had standing to sue, within the meaning of Article III, the situation of the plaintiffs in this case is not analogous. These plaintiffs are not residents of an apartment complex; they are not challenging the practices of a single landlord; and they are not

¹⁷ In *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), the Ninth Circuit held that Section 3612 did not grant a right to sue in circumstances almost identical to those presented herein. The court also noted, however, that the plaintiffs therein might not have standing in a constitutional sense because, unlike the plaintiffs in *Trafficante*, they were not residents of a single apartment complex, and the relationship between defendants' conduct and the claimed injury "may be so attenuated as to negate the existence of any injury in fact." *TOPIC, supra*, 1275.

suings to protect their right to live in an integrated "community." On the contrary, these plaintiffs complain that they have been denied the right to live in an integrated society. It is difficult to conceive of an injury more generalized in character. Indeed, if plaintiffs' assertion is correct, and they have been denied the benefits of interracial associations, it is the result of numerous social, economic and historical factors, which are beyond the control of these defendants. More important, the injury that they allege must, by definition, be shared by the public at large. In that important respect, it is unlike the injury alleged by the plaintiffs in *Trafficante*, which was shared only by the residents of a single apartment complex. The plaintiffs in this case have suffered no particularized injury which would entitle them to sue. See, e.g., *Schlesinger, supra*; *Warth, supra*.

Plaintiffs' allegations may raise legal and social questions which are significant in the abstract, but the abstract significance of those questions cannot assure standing to sue because that question "focuses on the party," not on the substantive issues sought to be raised in the litigation. *Flast v. Cohen*, 392 U.S. 83, 99 (1968).¹⁸ The Court has

¹⁸ While these plaintiffs lack standing, other plaintiffs—who have a particularized interest—would have standing to challenge defendants' alleged practices. The denial of standing to the plaintiffs herein will simply recognize that there are better plaintiffs than those currently before the Court; it will not implicate the merits of the abstract claim which these plaintiffs seek to adjudicate. Strictly speaking, however, the existence of other plaintiffs is irrelevant to the standing question. See *Schlesinger, supra*, 227. While the present plaintiffs cannot meet the requirements of Article III, and thus lack standing under Section 3612, they are not without a remedy. Presumably, they will be able to pursue their federal administrative remedies under Section 3610, as well as those remedies provided by the Village of Bellwood itself. See *Petitioners' Additional Appendix*.

frequently recognized that an abstract injury, even when it implicates cherished values, will not give rise to a case or controversy.

In limiting the jurisdiction of the federal courts to actual cases and controversies, the framers of Article III determined that alleged illegality must be adjudicated by persons whose particularized interests are directly put at issue. For instance, a citizen has a justifiable interest in the proper administration of justice in his community, but the Court has often held that that interest will not, by itself, support a challenge to unlawful practices in the administration of justice. *O'Shea v. Littleton*, 414 U.S. 488 (1974). See also *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973).

In another context, the Court has said that:

In some fashion, every provision of the Constitution was meant to serve the interests of all. Such a generalized interest, however, is too abstract to constitute "a case or controversy" appropriate for judicial resolution. The proposition that all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions has no boundaries.

Schlesinger, supra, 226-27 (footnote omitted.) The Court's analysis is equally applicable to statutory provisions.

A citizen's generalized interest in living in an integrated community is significant, just as his interest in living in a community free from judicial impropriety is important. In both cases, however, Article III requires that the vindication of these generalized interests be undertaken by persons whose particularized interests are also put at issue. See also *Sierra Club v. Morton*, 405 U.S. 727 (1972). Just as criminal defendants play an important role in our system of constitutional government by vindicating the

community's generalized interest in the impartial administration of justice, so must we depend on persons who are particularly affected by discrimination to vindicate our generalized interest in living in an integrated society.

The second standing requirement under Article III is that the nature of the plaintiffs' alleged injury be such as to entitle him to an opportunity to prove the existence of a plausible causal connection, between that injury and the defendant's alleged activities, sufficient to assure that the relief sought will adequately redress the injury sustained. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). This requirement reflects a concern for several factors including concreteness of injury, the proper role of the judiciary, and the efficient allocation of judicial resources. The causation requirement is basic: a plaintiff must demonstrate that the relief which he seeks would actually benefit him by redressing the injury from which he allegedly suffers. If the prospective relief will not benefit the plaintiff, he cannot be said "to stand to profit in some personal interest" by the court's decision. *Id.*, 39. In that event, the exercise of judicial power is "gratuitous and thus inconsistent with the Art. III limitation." *Id.*, 38. In short, "the plaintiff's stake in a controversy must insure that exercise of the court's remedial powers is both necessary and sufficient to give him relief." *Singleton v. Wulff*, 428 U.S. 106, 124 n.3 (1976) (Powell, J., concurring in part and dissenting in part.)

The Court has emphasized the constitutional importance of the causation requirement. In *Warth v. Seldin*, 422 U.S. 490 (1975), four groups of plaintiffs challenged a suburban zoning ordinance, claiming that the ordinance effectively excluded persons of low and moderate income from living in the town. One group of plaintiffs consisted of low and moderate income persons, who claimed that they had been

unsuccessful in finding housing that they could afford. In determining whether these plaintiffs had standing, the Court made three assumptions: (1) that the ordinance "had the purpose and effect of excluding persons of low and moderate income," *id.*, 502; (2) that the ordinance and its enforcement "would be adjudged violative of the constitutional and statutory rights of the persons excluded," *id.*; and (3) that these practices had "contributed, perhaps substantially, to the cost of housing in [the suburb]," *id.*, 504. These assumptions, together with the plaintiffs' allegations that they had been excluded by the ordinance, were insufficient to persuade the Court that the plaintiffs' "inability to locate suitable housing . . . reasonably [could] be said to have resulted, in any concretely demonstrable way, from [defendants'] alleged constitutional and statutory infractions." *Id.*, 504.

As here, the injury alleged in *Warth* could not have followed from the defendants' alleged practices. Given the relevant constellation of material facts, the causal connection was so implausible that plaintiffs could not, consistent with Article III, be given an opportunity to prove it. While apparent indirectness of injury does not automatically preclude standing, the Court noted in *Warth* that indirectness "may make it substantially more difficult to meet the minimum requirement of Art. III: to establish that, in fact, the asserted injury was the consequence of the defendants' actions, or that prospective relief will remove the harm." *Id.*, 505. In *Warth*, the Court held that the plaintiffs lacked standing because their inability to find suitably low priced housing resulted from "the economics of the area housing market," rather than from the acts of the defendants. *Id.*, 506. Consequently, the facts alleged "fail[ed] to support an actionable causal relationship between [the town's] zoning practices and [plaintiffs'] asserted injury." *Id.*, 507.

The Court also emphasized the causation requirement in *Simon, supra*, in which the plaintiffs challenged an Internal Revenue Service ruling which affected the tax-exempt status of private hospitals and, they asserted, thereby encouraged such hospitals to change their policies concerning indigent patients. The plaintiffs further alleged either that they had been denied free hospital care or, alternatively, that they represented other persons who had been denied such care. The Court accepted the proposition that the revenue ruling "encourages a hospital to provide fewer services to indigents than it might have under the previous policy" (*id.*, 42 n.23), but held that plaintiffs lacked standing because the injury alleged could not fairly be attributed to the revenue ruling itself:

It is purely speculative whether the denials of service specified in the complaint fairly can be traced to petitioners' "encouragement" or instead result from decisions made by the hospitals without regard to the tax implications.

It is equally speculative whether the desired exercise of the court's remedial powers in this suit would result in the availability to respondents of such services. So far as the complaint sheds light, it is just as plausible that the hospitals to which respondents may apply for service would elect to forego favorable tax treatment to avoid the undetermined financial drain of an increase in the level of uncompensated services.

Id., 42-43. The possibility that some hospitals, in the absence of the new revenue ruling, would have provided more free care in order to maintain tax-exempt status was "speculative at best." *Id.*, 43.

In the present case, the causal relationship between the individual plaintiffs' injury—being denied the right to live in an integrated society—and defendants' alleged discriminatory practices is also "speculative at best." The causal

connection between the Village of Bellwood's alleged injury and defendants' alleged activities is equally attenuated and speculative. Residential housing patterns are determined by a complex mixture of numerous economic, social and historical factors. In *Warth*, the Court recognized the primacy of economic factors in this area, holding that the plaintiffs lacked standing because the mere removal of an exclusionary zoning ordinance could not insure the availability of low and moderate income housing. *Id.*, 506-07. Similarly, there is no reasonable basis for argument in the present case that the activities of two real estate firms are the necessary and sufficient cause of the macrosocial injuries alleged by both the individual plaintiffs and the Village of Bellwood.¹⁹

The individual plaintiffs have alleged an extremely generalized injury shared by a large group of persons. Moreover, the causal relationship between the injuries alleged by both the individuals and the Village, and defendants' alleged statutory violation, is so insubstantial that the po-

¹⁹ See also *American Society of Travel Agents, Inc. v. Blumenthal*, 566 F.2d 145, 150 (D.C. Cir. 1977), *cert. denied*, U.S., 98 S.Ct. 1533 (1978) (private travel agents lacked standing to challenge tax treatment of travel-related income of certain tax-exempt organizations; in light of the variety of factors influencing the travel programs of such organizations, plaintiffs did not demonstrate "that they would reap any tangible benefit if the court were to order the relief sought"); *Starbuck v. City and County of San Francisco*, 556 F.2d 450, 459 (9th Cir. 1977) (plaintiffs lacked standing under Article III: "We cannot ignore the reality that the consumers' costs of energy are far more attributable to national and international forces of supply and demand than they are to the Secretary's actions and omissions"); *Mulqueeny v. National Commission On the Observance of International Women's Year*, 549 F.2d 1115, 1121-22 (7th Cir. 1977) (plaintiffs lacked standing to challenge lobbying of defendant Commission: court notes that effect of lobbying is "wholly conjectural"); *Bowker v. Morton*, 541 F.2d 1347 (9th Cir. 1976); *Evans v. Lynn*, 537 F.2d 571 (2d Cir. 1976) (*en banc*), *cert. denied*, 429 U.S. 1066 (1977).

tential effect of the relief sought, in redressing that injury, is merely speculative. These plaintiffs have failed to allege a concrete interest sufficient to satisfy the case or controversy limitation of Article III.

B. These Plaintiffs Do Not Have Standing Under This Court's Decision In *Trafficante*.

The Seventh Circuit erroneously construed this Court's decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), in holding that the plaintiffs herein had standing to sue in the circumstances of this case. While acknowledging that this Court's decision in *Trafficante* was not technically controlling, the Court of Appeals found that it stood for the broad proposition that an allegation of injury to a citizen's generalized interest in living in an integrated society would categorically assure justiciability. The court noted that the complaint in this case contained "virtually identical allegations." *Appendix* 155. However, this Court's holding in *Trafficante* was considerably more narrow: the Court held only that a group of tenants, who complained that their landlord's rental practices deprived them of the benefits of living in an integrated community, had alleged a sufficiently particularized injury to meet the requirements of Article III. The limited nature of the Court's holding is underscored by the separate concurrence of Justice White, joined by Justice Blackmun and Justice Powell, who said that he "would sustain the statute insofar as it extends standing to those in the position of the petitioners in this case." *Id.*, 212 (White, J., concurring).

The facts of *Trafficante* are distinguishable from the present case in two important respects. First, the injury alleged in *Trafficante* is wholly distinguishable from the injury alleged by these plaintiffs. A tenant's interest in living in an integrated apartment complex is not constitutionally analogous to a citizen's interest in living in an integrated society because the latter is necessarily less

particularized and more diluted. The injury alleged in the present case is also more generalized, inasmuch as it is shared by every person residing in a large metropolitan area of our society.

The second distinction between this case and *Trafficante* is closely related to the first: the causal connection between defendants' conduct and plaintiffs' alleged injury is significantly more obscure in the present case. The uncertain influence of defendants' alleged activities on metropolitan residential patterns bears little resemblance to the control that a landlord necessarily maintains over the residential patterns of an apartment complex. An apartment complex is an artificial and controlled environment in which a landlord's discriminatory practices may be both the necessary and sufficient causes of a tenant's loss of the opportunity to live in an integrated community. By contrast, many independent economic and social forces are implicated when the focus is shifted to a larger community. Therefore, the causal relationship between the alleged conduct of defendants and the alleged injuries, of both the individual plaintiffs and the Village of Bellwood, is substantially more attenuated than the causation recognized in *Trafficante*.

The Court's analysis in *Warth, supra*, is also instructive in distinguishing the present case from *Trafficante*. In *Warth*, the Court held that a particular group of plaintiffs lacked standing to challenge a municipality's exclusionary zoning ordinance because the nature of the causal connection between their alleged injury and the defendants' alleged activities was so uncertain that they could not, consistent with Article III, be given an opportunity to attempt to prove it. Judicial invalidation of the ordinance could not result in the increased availability of low and moderate income housing. The Court distinguished many lower court decisions, in which they had found standing to challenge zoning restrictions, on the ground that plaintiffs in those

cases had "challenged zoning restrictions as applied to particular projects that would supply housing within their means, and of which they were intended residents." *Warth*, *supra*, 507. In those cases, consequently, the relief requested would undoubtedly redress a very real and concrete injury. See also *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). Likewise, in *Trafficante*, there was no dispute that the Court could grant effective relief because the causal relationship between the plaintiffs' alleged injury and their landlord's alleged activities was certain. The facts of the present case, however, are analogous to those of *Warth*, not *Trafficante*.

The decision of the Court of Appeals, which allows suits by natural persons and municipalities, who have no particularized interest and can demonstrate only the most attenuated causation, is inconsistent with the limitations imposed on the federal courts by Article III. Because respondents lack standing to sue in these circumstances, the decision of the Court of Appeals must be reversed.

CONCLUSION

For all of the reasons stated herein, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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Dated: 27 July 1978

APPENDIX

PETITIONERS' ADDITIONAL APPENDIX

ORDINANCE NO. 75-8

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BELLWOOD, COOK COUNTY, ILLINOIS that the Bellwood Village Code be amended by adding the following new chapter thereto:

CHAPTER 37—REAL ESTATE BROKERS, REGULATING REAL ESTATE BROKERS AND PROHIBITING DISCRIMINATION IN REAL ESTATE TRANSACTIONS.

Sec. 37-1. Title and Purpose of the Ordinance.

Short Title. This ordinance shall be known and may be cited as the *Fair Housing Ordinance* of the Village of Bellwood, Illinois.

Sec. 37-1.1 Purpose and Declaration of Policy.

It is hereby declared to be the policy of the Village of Bellwood and the purpose of this ordinance, in the exercise of its police and regulatory powers for the protection of the public safety, for the health, morals, safety and welfare of the persons in and residing in the Village, and for the maintenance and promotion of commerce, industry, and good government in the Village, to secure to all persons living and/or working, or desiring to live and/or work in the Village of Bellwood, an equal opportunity to purchase, lease, rent or occupy real estate without discrimination based on race, color, religion, national origin or sex.

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Sec. 37-1.2 *Construction.*

This ordinance shall be construed according to the fair import of its terms and shall be liberally construed to further the purposes and policy stated in Section 1 and the special purpose of the particular provision involved.

Sec. 37-1.3 *Severability.*

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Sec. 37-1.4 *Definitions.*

For the purposes of this ordinance:

- (a) 'Real Property' means any real estate, improved or unimproved within the Village limits, including rooming units.
- (b) 'Discriminate' means to make distinction in treatment of any person because of race, color, religion, national origin or sex.
- (c) 'Dwelling Unit' means a room or group of rooms designed for occupancy by one family with eating, sleeping and living facilities, or lodging rooms as defined in the Bellwood Zoning Ordinance.
- (d) 'Lease' or 'leasing' includes and means rent, renting, assignment, sublease and subletting.
- (e) 'Lending Institution' means any bank, insurance company, savings and loan association, other person in the business of lending money or guaranteeing loans, any person in the business of obtaining, arranging, or negotiating loans or guar-

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antees as agent or broker, and any person in the business of buying or selling loans or instruments for the payment of money which are secured by title to or a security interest in real estate, even though such lending institution does not maintain an office or place of business within the Village of Bellwood.

- (f) 'Owner' means any person who holds legal or equitable title to, or owns any beneficial interest in, any real property or who holds legal or equitable title to shares of, or holds any beneficial interest in, any real estate cooperative which owns any real property, or any person who is acting as the agent, manager, or employee of the owner, even though such owner does not reside within the Village of Bellwood.
- (g) 'Person' includes one or more individuals, corporations, partnerships, associations, legal representatives, mutual companies, unincorporated organizations, trusts, trustees in bankruptcy, receivers and fiduciaries, even though such person does not reside or maintain an office or place of business within the Village of Bellwood.
- (h) 'Purchase' includes any contract to purchase.
- (i) 'Real Estate Broker or Salesman' means any person licensed as a real estate broker or salesman in accordance with the provisions of Chapter 114½ Illinois Revised Statutes, or required thereby to be so licensed, who performs any function as such broker or salesman within the limits of the Village of Bellwood even though such broker or salesman does not maintain an office or place of business within the Village of Bellwood.

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- (j) 'Real Estate Transaction' means the purchase, sale, exchange, or lease of any real property, and an option to do any of the foregoing.
- (k) 'Sale' includes any contract to sell, exchange or to convey, transfer, or assign legal or equitable title to or a beneficial interest in real property.
- (l) 'Commission' means the Bellwood Human Relations Commission.

Sec. 37-2. Prohibition of Discriminatory Acts by all persons.

Sec. 37-2.1 Discrimination Prohibited.

No owner, lessee, or sub-lessee of real property, real estate broker, lender, financial institution, advertiser, or agent of any of the foregoing shall discriminate against any other person because of the race, color, religion, national origin or sex of each other person or because of the race, color, religion, national origin or sex of the friends or associates of such other person, in regard to the sale or rental of, or dealings concerning real property. Any such discrimination shall be considered an unfair real estate practice. Without limiting the foregoing, it shall be an unfair real estate practice and unlawful for any real estate broker or other person to:

(a) Advertisement

Publish or circulate, or cause to be published or circulated, any notice, statement or advertisement, or to announce a policy, or to use any form of application for the purchase, lease, rental, or financing of real property, or to make any record or inquiry in connection with the prospective purchase, rental or lease of real property, which ex-

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presses directly or indirectly any limitation or discrimination or any intent to make any such limitation or discrimination.

(b) Deceive or Overcharge

Deceive or overcharge any person for real property in the Village, or to make any distinction, discrimination, or restriction against any person as to the conditions or privileges of any kind relating to the sale, rental, lease or occupancy of real estate.

(c) Discriminate in Lending

Discriminate or to participate in discrimination in connection with borrowing or lending money, guaranteeing loans, accepting mortgages, or otherwise obtaining or making available funds for the purchase, acquisitions, construction, rehabilitation, repairs or maintenance of any real property in the Village.

(d) Change in Neighborhood

Solicit or to enter into any agreement for the sale, lease, or listing for sale or lease, of any real property within the Village on ground of loss of value due to the present or prospective entry into any given dwelling unit, block, street, neighborhood or area of any person or persons of any particular race, color, religion, national origin or sex.

(e) Inducing Sales

Distribute or cause to be distributed, written material or statements designed to induce any owner of any real property in the Village to sell or lease his or her real property because of any present or prospective change in the race, color, religion,

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national origin or sex in the area will or may result in the lowering of real property values in the block, neighborhood, or area in which the property is located.

(g) Refusal or failure to sell

Refuse or fail to sell or rent real property because of race, color, religion, national origin or sex after the making of a bona fide offer.

(h) Refusal to Show Records of Available Housing

Refuse or fail to show to any person who has specified his needs, the list or other records identifying all real properties reasonably meeting such specifications.

(i) Withholding Housing

Represent to any person that any real property is not available for inspection, purchase, sale, lease or occupancy when in fact it is so available, or otherwise to withhold real property from any person because of race, color, religion, national origin or sex.

(j) Refusal or failure to Show Real Estate

Refuse or fail to show real estate because of the race, color, religion, national origin or sex of any prospective purchaser, lessee, or tenant, or because of the race, color, religion, national origin or sex of the residents of the area in which the property is located.

(k) Steering

To discourage another person from purchasing real property by representations regarding the presence or anticipated presence of persons of any

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particular race, color, religion, national origin or sex in the area or to otherwise make unavailable or deny the purchase of real property by representations regarding the presence or anticipated presence of persons of any particular race, color, religion, national origin or sex, which will or may result in the lowering of property values in the block, neighborhood, or area where the property is located.

To encourage another person to purchase real property in a certain area because of that person's particular race, color, religion, national origin or sex, and because of the presence or anticipated presence of persons of that particular race, color, religion or national origin in that certain area.

- (l) Intentionally create alarm among residents of the Village of Bellwood, by transmitting in any manner, including a telephone call whether or not conversation ensues, with a design to induce any owner of real estate in the Village to sell or lease his property because of any present or prospective entry into the vicinity of the property involved of any person or persons of any particular race, color, religion, national origin or sex.
- (m) Make any oral statement designed to induce any owner of real estate in the Village to sell or lease his property because of any present or prospective change in the race, color, religion, national origin or sex of persons owning any given dwelling unit, street, block, neighborhood, or area in the Village.
- (n) Volunteer, in the capacity of a real estate broker or real estate salesman, to a prospective purchas-

er or lessee of any real estate in the Village, any information on the race, color, religion, national origin or sex of the residents of any given dwelling unit, street, block, neighborhood, or area in the Village.

Sec. 37-2.2 *Exemptions.*

This ordinance shall not:

- (a) Bar any religious or denominational institution or organization, or any charitable or educational organization operated, supervised or controlled by or in connection with a religious organization from limiting living accommodations, or giving preference with respect thereto, to persons of the same religion or denomination.
- (b) Apply to the leasing of rooms to roomers in a dwelling unit occupied by the owner or lessee of the entire premises as a family household having not more than two rooms exclusive of salaried household employees living on premises.
- (c) Apply to the sale or rental of any such single family house only if such house is sold or rented (1) without the use in any manner of the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman or person and (2) without the printing, publishing or making of any notice, statement or advertisement with respect to the sale or rental of a dwelling unit that indicates any preference, limitation or discrimination based on race, color, religion, national origin, or sex; but nothing in this section shall prohibit the use of

attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title.

Sec. 37-3. *Enforcement.*

Sec. 37-3.1 It shall be the duty of the Bellwood Human Relations Commission to:

- (a) Initiate or receive and investigate complaints charging unlawful housing practices;
- (b) Seek conciliation of such complaint, hold conciliation hearings and make findings of fact in accordance with the provisions of this ordinance.

Conciliatory hearings conducted pursuant to the provisions of this ordinance shall be closed meetings and shall not be subject to "An Act in Relation to Meetings", Ill. Rev. Stat., Chap. 102, Sec. 41 et seq; provided, however, that no final action for the imposition or recommendation of a penalty by the Commission shall be taken except at a meeting open to the public.

- (c) Render from time to time, but not less than once a year, a written report of its activities and recommendations with respect to fair housing practices to the President and Board of Trustees; and
- (d) Adopt such rules and regulations as may be necessary to carry out the purposes and provisions of this ordinance.

Sec. 37-3.2 Any person aggrieved in any manner by any violation of any provision of this ordinance or any person having knowledge of any violation of this ordinance, may file a written complaint within 60 days of the alleged violation with the Bellwood Human Re-

lations Commission. Said complaint shall state the name and address of the complainant and of the person or persons against whom the complaint is brought and shall contain a statement of facts describing the alleged violation.

Sec. 37-3.3 The Commission shall, within 5 days after a complaint is filed, serve a copy thereof either personally or by certified mail, return receipt requested, on the person or persons against whom the complaint is filed. The Commission shall also, within 5 days after the complaint is filed, forward a copy thereof to the President and Board of Trustees and the Village Attorney.

Sec. 37-3.4 Said Commission is hereby fully authorized immediately to investigate every such complaint thus filed. If the Commission determines that the respondent has not engaged in any unlawful practice, it shall state its findings of fact in writing and dismiss the complaint. If the Commission determines after such investigation that probable cause exists for the allegations made in the complaint, the Commission shall set a date for a conciliation hearing within two weeks of the filing of the complaint. Notice of such conciliation hearing shall be sent to all parties not less than 7 days before such hearings, stating the date, time and place of the hearing.

Sec. 37-3.5 At such hearing at least 2 members of the Commission shall interview the complainant and the person or persons against whom the complaint has been brought and shall attempt to resolve the complaint by all proper methods of conciliation and settlement. If such attempts at conciliation and settlement are not successful within 30 days after the date of fil-

ing of the complaint, the Commission shall then make findings of fact in writing setting forth which provisions of this ordinance the Commission believes have been violated and recommend in writing to the President and Board of Trustees that the Village Attorney proceed promptly in filing a complaint in a court of competent jurisdiction for violation of this ordinance or to seek such equitable relief as the Commission shall recommend.

Sec. 37-3.6 In addition thereto, the President and Board of Trustees may direct the Village Attorney to file with the Department of Registration and Education of the State of Illinois a complaint against any real estate broker found guilty of violating any provision of this ordinance, seeking suspension or revocation of the license issued to such broker by the State of Illinois.

The Village Attorney shall file a written report with the Commission and President and Board of Trustees as to the status of each civil or criminal complaint filed hereunder at least once a month.

Sec. 37.4 *Fine.*

Any owner, lessee or sub-lessee of real property, real estate broker, lender, financial institution or agent or any of the foregoing violating the provisions of this ordinance shall be fined not less than \$50.00 nor more than \$500.00 for each offense. Every day a violation continues shall be deemed a separate offense.

All ordinances or portions of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

Passed And Approved this day of July, 1975.

.....
Village President

Attest:

.....
Village Clerk

AUG 26 1978

No. 77-1493

MICHAEL RUDAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

GLADSTONE REALTORS, et al.,
Petitioners,

VS.

VILLAGE OF BELLWOOD, et al.,
Respondents.

ROBERT A. HINTZE REALTORS, et al.,
Petitioners,

VS.

VILLAGE OF BELLWOOD, et al.,
Respondents.

On A Writ Of Certiorari To The United States Court
Of Appeals For The Seventh Circuit

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

GLADSTONE REALTORS, et al., *Petitioners,*

vs.

VILLAGE OF BELLWOOD, et al., *Respondents.*

ROBERT A. HINTZE REALTORS, et al., *Petitioners,*

vs.

VILLAGE OF BELLWOOD, et al., *Respondents.*

On A Writ Of Certiorari To The United States Court
Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals, which is reported at 569 F.2d 1013 (7th Cir. 1978), appears in the Appendix. *Appendix* 151-163. The opinions of the District Courts, which are not reported, are also contained in the Appendix. *Appendix* 83-89, 148.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1978. The petition for a writ of certiorari was filed within 90 days of that date and was granted on June 12, 1978. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether homeowners or their village have standing to sue under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.*) or the Civil Rights Act of 1866 (42 U.S.C. § 1982) to prevent illegal racial steering directed against their community by realtors and their agents.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional and statutory provisions are set forth at Brief for Petitioners 2-8.

STATEMENT OF THE CASE

Factual Background

On October 24, 1975, respondents Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp, Joyce Perry, the Village of Bellwood, and the Leadership Council for Metropolitan Open Communities filed two complaints with the District Court for the Northern District of Illinois charging, respectively, that petitioners Gladstone Realtors and six of its salespersons and Robert A. Hintze Realtors and three of its salespersons had engaged in the practice of racial steering in violation of Title VII of the Civil Rights Act of 1968 (the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. § 1982). *Appendix 4-7, 97-100.* Specifically, petitioners were accused of illegally influencing the choice of prospective homebuyers on the basis of race by discouraging blacks from purchasing homes in predominantly white areas and by discouraging whites from purchasing homes in integrated, "changing," or predominantly black neighborhoods in a designated area of Bellwood, Illinois. *Ibid.*

Bellwood is a suburb of Chicago in western Cook County to which a number of blacks, such as respondent Joyce Perry, have moved in recent years. Four of the other individual respondents are white homeowners in Bellwood. Respondent Sandra Sharp is a black resident of neighboring Maywood. *Appendix 32-34.* The respondent brokers have offices in the Bellwood area and are members of the West Suburban Board of Realtors, which covers an area that includes the towns of Bellwood, Berkeley, Broadview, Hillside, Maywood, Melrose Park, Northlake, Stone Park and Westchester, Illinois.

As one of the few municipalities in its area with a significant and growing black population, Bellwood has become a "target" community to which realtors and their sales personnel direct black homeseekers who want to live in the western suburbs. Meanwhile, according to reports received by the Village of Bellwood, area realtors steer white homeseekers away from Bellwood to near-by communities such as Berkeley, Westchester, and Hillside. Within Bellwood, itself, certain neighborhoods were being "sold black," while homes in the western part of the Village were only being shown to whites.

Wanting to keep their homes and still live in a stable, integrated community, a number of Bellwood residents, both white and black, asked their Village officials to determine which brokers and sales persons were making efforts to racially change their community and to stop racial steering and other discriminatory practices before substantial parts of Bellwood were resegregated. These residents hoped to avoid the economic losses, fear, social unrest, and other hardships that they knew often accompanied rapid racial change in a community, where "if the real estate industry is allowed to operate unchecked, the pace of racial transition will be manipulated in a way that will irreparably distort any chance for normal and stable racial change."¹

¹ *Zuch v. Hussey*, 394 F. Supp. 1028, 1034 (E.D. Mich. 1975), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1976). With respect to the effects of rapid racial change on a community and the role that realtors may play in that change, see also *id.*, at 1032-1034 and 1053-1055; *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115, 124 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973); *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1240 (N.D. Ga. 1969); *United States v. Mitchell*, 355 F. Supp. 1004, 1005-1006 (N.D. Ga. 1971); *aff'd*, 474 F.2d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973); *Barrick Realty Co. v. City of Gary, Indiana*, 354 F. Supp. 126, 135 (N.D. Ind. 1973), *aff'd*, 491 F.2d 161 (7th Cir. 1974); *United States v. Real Estate One, Inc.*, 433 F. Supp. 1140, 1150 (E.D. Mich. 1977).

Before starting any litigation, the Village decided to organize and conduct an investigation of real estate practices in the Bellwood area in September of 1975. In the course of this investigation, several volunteers, including five of the individual respondents, visited various real estate offices acting as prospective homebuyers in order to ascertain whether a black prospect would be treated differently than a white prospect. 569 F.2d, at 1015; *Appendix* 152-153. These "tests" showed that some brokers followed the law, but that agents of petitioners Gladstone Realtors and Robert A. Hintze Realtors discriminated between prospective homebuyers on the basis of their race: white and black prospects who asked for the same thing in terms of price, size, and general location were shown homes in different areas, with the blacks' housing choice often being limited to eastern Bellwood alone or in some cases to Bellwood and other integrated or racially changing communities.

For example, when Lonnie M. Randolph, a black, visited Gladstone Realtors' office in Westchester and asked for homes in the area, he was shown five house listings, all in neighborhoods in eastern Bellwood where substantial numbers of blacks already lived (see *Appendix* 64-68); when Edward B. Powell, who is white, visited the same office and made the same request, he was given five entirely different listings, all of which were in all-white neighborhoods in Westchester, southern Broadview, and western Bellwood. *Appendix* 69-70. The salesman with whom Powell dealt told him that "there are some areas of Bellwood he did not want to show us because they were bad areas. When asked why they were bad, he said they were integrated." *Appendix* 70. Later, Powell picked out a listing for a home in an integrated area of eastern Bellwood on Cernan Drive, which the salesman said was "kind of nice." According to Powell's report:

I asked what "kind of nice" meant. He said that I must not have been following what he had been saying. He showed us the Bellwood map and pointed out the [integrated] Zuelke Drive area and where he had been showing me homes, he pointed to the western side of Bellwood on the map and said these are the better areas I would be shown. During this conversation the salesman said again the Zuelke Drive area was integrated and the area around Cernan Drive was still alright, but he would show us homes west of there. *Appendix 70.*

When another white couple visited the Gladstone office, they, too, were only shown listings for homes in white areas. According to their report, the salesman with whom they dealt "began by saying he was flipping through pages of sales books, passing over homes in integrated neighborhoods. He said he didn't know how we felt, he really didn't care. We made no comment. He then said he would show us houses only west" *Appendix 75.* Similar statements about "integrated" areas of Bellwood were made by salesmen for petitioner Hintze Realtors. *E.g., Appendix 131.*

Proceedings Below

As a result of this and other evidence produced by Bellwood's investigation, the Village, six local homeowners, and the Leadership Council for Metropolitan Open Communities brought these suits under the federal fair housing laws to recover damages and to have petitioners' discriminatory practices declared illegal and enjoined. *Appendix 6-7, 99-100.* As homeowners in the area affected by petitioners' racial steering practices, the individual respondents alleged that Gladstone's and Hintze's illegal conduct denied them their "right to select housing without regard to race" and deprived them "of the social and professional benefits of living in an integrated society." *Appendix 6, 99.* Petitioners were ac-

cused not only of steering testers, but of steering everyone "who used or sought to use the[ir] services" in the Bellwood area both before and after petitioners were investigated by the Village. *Appendix 5, 98.* For its part, the Village of Bellwood alleged that it has been injured "by having the housing market in [Bellwood] wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village." *Appendix 6, 99.* Finally, the Leadership Council asserted that petitioners' steering practices interfered with its work of combatting housing discrimination in the Chicago area and required it to make substantial expenditures to investigate and eliminate those unlawful acts. *Appendix 6, 98-99.*

In response to these complaints, petitioners filed motions to dismiss in both cases on November 17, 1975. *Appendix 12-13.* While these motions were pending,² both sides filed written interrogatories, requests for production of documents, and requests for admissions. *Appendix 8-22, 100-113.* Respondents answered these requests in both cases on April 2, 1976. *Appendix 25-77, 114-142.* Petitioners, however, never responded to the discovery requests directed to them.

On July 7, 1976, petitioners filed motions for summary judgment in both cases. *Appendix 78-82, 143-147.* These motions, which were based in part on the discovery received from respondents, alleged that none of the respondents had standing to assert their claims under the federal fair housing laws because they were not actually in the market for new homes. On September 23, 1976, Judge Decker entered his Memorandum Opinion

² Petitioners' motion to dismiss in *Gladstone* was denied by Judge Decker on March 29, 1976, in an order in which the court ruled that ". . . the complaint on its face does state a claim for relief under [§ 1982 and Title VIII]." *Appendix 23.* Judge Perry never ruled on the motion to dismiss in *Hintze*.

granting petitioners' motion in the *Gladstone* case and dismissing the cause. *Appendix* 83-89. On September 29, 1976, Judge Perry explicitly adopted Judge Decker's earlier opinion granting petitioners' motion for summary judgment and dismissed the *Hintze* case. *Appendix* 148.

The Court of Appeals for the Seventh Circuit reversed. 569 F.2d 1013 (7th Cir. 1978); *Appendix* 151-163. It held that the thrust and rationale of this Court's decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972) "plainly suggest that the individual plaintiffs and the Village of Bellwood have standing." 569 F.2d, at 1019; *Appendix* 160.³ The Seventh Circuit noted that the allegations of the individual homeowners here were "virtually identical" to those that *Trafficante* had held were sufficient to establish standing under Title VIII. 569 F.2d, at 1016; *Appendix* 155. With respect to the Village of Bellwood, the court pointed out that

it is apparent that specific concrete injury with substantial nexus to the Village's status as a unit of government could be proved under these complaints. See *Flast v. Cohen*, 392 U.S. 83, 102 (1968). An area targeted as a "changing neighborhood" to which minority homeseekers may be steered could experience unnaturally rapid population turnover, with destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them.

569 F.2d, at 1017; *Appendix* 156.

³ The Court of Appeals affirmed the dismissal of the Leadership Council on the ground that the Council's commitment to fair housing in these cases was not sufficient to satisfy such cases as *Sierra Club v. Morton*, 405 U.S. 727 (1972). 569 F.2d, at 1017; *Appendix* 156-157.

Finally, the Court of Appeals rejected the argument adopted by the Ninth Circuit in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976), *cert. denied*, 429 U.S. 859 (1976) that homeowners in an area where local realtors engage in racial steering cannot bring a Title VIII complaint directly in federal court under 42 U.S.C. § 3612 without first filing a complaint with HUD under 42 U.S.C. § 3610. After careful consideration of the language, intent, and legislative history of Title VIII, the Seventh Circuit joined the numerous other federal courts throughout the country that have concluded that *TOPIC* was wrongly decided⁴ and held that "there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612." 569 F.2d, at 1019; *Appendix* 162.

In view of its holding that the individual homeowners and the Village had standing under Title VIII, the Court of Appeals did not consider standing under § 1982 separately. 569 F.2d at 1017, n. 4; *Appendix* 157. It concluded by remanding these cases to the District Courts for further proceedings. 569 F.2d, at 1020; *Appendix* 163.

⁴ *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486 (E.D. N.Y. 1977); *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service*, 422 F. Supp. 1071 (D. N.J. 1976); see also *Zuch v. Hussey*, 394 F. Supp. 1028 (E.D. Mich. 1975); *Village of Park Forest v. Fairfax Realty, P-H:Eq. Opp. Hsing Prtr.* ¶13,699 (N.D. Ill. 1975) and *P-H:Eq. Opp. Hsing Rptr.* ¶13,781 (N.D. Ill. 1976); *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975).

SUMMARY OF ARGUMENT

Petitioners' racial steering practices violate Title VIII and § 1982. Those illegal practices are destroying Bellwood as an integrated community, thereby imposing financial and social injuries on the Village and its homeowners that are even greater than those recognized as sufficient to confer standing in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). Respondents are asserting their own rights to maintain their homes and their community free from illegal racial considerations. In addition, they are the only effective adversary of petitioners' practice of steering white and black homeseekers to different areas.

The Court of Appeals' decision that standing under § 3612 is as broad as standing under § 3610 is supported by the language of the Fair Housing Act, its legislative history, the Supreme Court's unanimous decision in *Trafficante*, the authoritative interpretation of the statute by HUD, and the overwhelming number of federal court decisions on point. Only the Ninth Circuit in *TOPIC* has disagreed, and that decision totally misconstrued the proper relationship of § 3610 and § 3612. These two sections provide alternative, independent remedies to be used at the option of the complainant. Section 3610 does have a role in resolving certain simple complaints, but it was not intended to be as powerful a remedy as § 3612 or to limit § 3612 in any way.

Respondents also have standing under § 1982. Section 1982 condemns racial discrimination in housing as thoroughly as Title VIII does, and respondents' right to "hold" their homes free from petitioners' racial steering is protected by § 1982.

Since respondents' injuries are direct and personal to them and since a federal court can provide relief that will redress those injuries, the requirements of standing imposed by Article III and "judicial self-governance" considerations have been satisfied. Indeed, *Trafficante* forecloses any argument to the contrary.

Thus, it is well established that petitioners' steering practices violate the federal fair housing laws, that those violations caused respondents personal, concrete, and compensable injury, and that those injuries can and should be redressed by a federal court should respondents prevail at trial. Petitioners have not challenged any of these propositions by way of a responsive pleading, factual affidavit, or other technique that could justify summary judgment. Rather they claim that certain discovery answers indicating at this early stage what incriminating evidence is currently available to respondents justify ending these cases not only prior to trial, but prior to respondents' opportunity to take any discovery of their own. Apart from the fact that the discovered evidence alone would justify full relief for respondents, summary judgment is simply not an appropriate method of resolving litigation in which the ultimate factual issues—whether petitioners have engaged in racial steering and to what extent respondents have been injured thereby—are still so very much in dispute.

ARGUMENT

Introduction

The Village of Bellwood and the individual respondents allege in substance that petitioners' discriminatory practices are causing unnaturally rapid racial change amounting to the resegregation of their community.⁵ As a result, local homeowners—black as well as white—are being forced to choose between moving away from their integrated village or suffering the economic losses and other hardships of keeping their Bellwood homes. See n. 1, *supra*, and 569 F.2d, at 1017; *Appendix* 156. The Village of Bellwood, of course, cannot run away. As an area targeted by petitioners for rapid racial change, the Village faces "unnaturally rapid population turnover, with destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems" to which it will have to commit its limited resources. 569 F.2d, at 1017; *Appendix* 156. It is a mark of how poorly petitioners understand this case that they label these injuries throughout their brief as merely "generalized" and "indirect." To the contrary, this Court has determined that the benefits to both whites and blacks of living in an integrated community are "substantial" (*Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85, 94-95 (1977)), and it has unanimously held that being deprived of these benefits is "[i]ndividual injury or injury in fact" suf-

⁵ See *Appendix* 5-6, 98-99. It is, of course, axiomatic that the complaint and other materials submitted in connection with the summary judgment motions must be viewed in the light most favorable to respondents as the parties opposing those motions. *E.g.*, *Adickes v. S. H. Kress and Company*, 398 U.S. 144, 157 (1970).

ficient to satisfy the requirements of standing. *Trafficante v. Metropolitan Life Insurance Co.*, *supra*, 409 U.S., at 209.⁶

In addition to their oft-repeated technique of labelling respondents' injuries "generalized" and "indirect," petitioners create a number of other false impressions that should be cleared up by way of introduction. First, petitioners imply that they have only been accused of steering testers, not actual homeseekers. As noted above, the complaints clearly allege that petitioners steered actual homeseekers both before and after the testers visited their offices. *Appendix* 5, 98.

Second, petitioners erroneously suggest that these claims of unlawful steering have somehow been amended or limited by respondents' interrogatory answers indicating that the evidence now available to respondents to prove these violations is the "subject matter" of the testers' report. *Appendix* 27-28, 116-117. The "subject matter" of those reports, of course, is the different treatment that petitioners gave to their white and black

⁶ Respondents' injuries are even more substantial than those held sufficient in *Trafficante*. Respondents do make the *Trafficante*-type claim of losing the social, professional, and economic benefits of living in an integrated community (*Appendix* 6, 99), but there is more here than the desire of affluent whites to have some black neighbors. Bellwood, after all, was *already* integrated when petitioners began to channel more blacks into the Village and steer whites away. Thus, the economic injuries suffered by the individual respondents (*e.g.*, the reduced value of their homes caused by "panic selling" in their area) are more tangible than the economic injuries alleged in *Trafficante*, and the "social" injuries here result not from petitioners prohibiting an integrated community, but rather from their destroying such a community. Actually the precise claim that would be comparable to *Trafficante* would lie with residents of neighboring white towns such as Westchester or Berkeley, to which petitioners direct only white homeseekers. As important and well-recognized as such a claim might be, it would not allege injuries nearly so serious as those suffered by the Bellwood homeowners in this case.

customers. Furthermore, evidence that petitioners steered the testers is competent evidence that they also made similar misrepresentations to actual homeseekers. See, e.g., *McCormick on Evidence* § 197 (2d ed. 1972). As the Court of Appeals pointed out:

What the testers did was to generate evidence suggesting the perfectly permissible inference that the defendants have been engaging, as the complaints allege, in the practice of racial steering with all of the buyer prospects who come through their doors. Racial steering, by its nature, is a subtle form of discrimination that is difficult if not impossible to prove otherwise than by comparing the areas to which homeseekers of different races are directed. The strength of the inference suggested by such a comparison is not affected by whether or not the "homeseeker" has a bona fide intent to purchase a home.

569 F.2d, at 1016; *Appendix* 153-154. See also *Zuch v. Hussey*, 394 F. Supp. 1028 (E.D. Mich. 1975), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1976) (steering enjoined on the basis of evidence supplied by testers).⁷

Third, the individual respondents' claims are based on their injuries as homeowners, not on their status as

⁷ Even if it were held that specific examples of petitioners' discrimination against actual homeseekers were required, summary judgment should not have been granted by the trial courts. Much of the evidence of how petitioners treat their prospects is, after all, known only to them, and respondents should be permitted an opportunity to discover that evidence. Cf. *Hospital Building Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 746 (1976). It must be remembered that petitioners never answered respondents' discovery requests, which had been pending for over 10 months when summary judgment was entered. Thus, as the Court of Appeals noted, petitioners' argument that there has been no showing of steering practiced on true homeseekers "rings hollow in the light of defendants' refusal to date to provide any of the discovery sought by plaintiffs." 569 F.2d, at 1016; *Appendix* 154. See also *Wright, Law of Federal Courts*, § 86, pp. 382 and 385 (2d ed. 1970).

testers. Indeed, at least one of the respondents (Mary P. Powell) did not participate in the testing program. With respect to her claims, therefore, the issue is simply whether a homeowner has standing under the federal fair housing laws to challenge racial steering practices directed against her community. The other individual respondents assert the same homeowners' claims as Mrs. Powell does. Surely their rights cannot be reduced by the fact that they also helped in the investigations that led to these suits. As the Court of Appeals put it: "To the degree defendants are seeking to saddle plaintiffs with the argument that testers *qua* testers have a cause of action, they have either misread the complaint or erected a straw man." 569 F.2d, at 1016; *Appendix* 154.⁸

Finally, it is important to keep in mind that respondents are asserting their own rights, not those of third parties. It is respondents' community that is being racially changed, and it is *their* right to maintain their present homes without regard to illegal racial considerations that petitioners are violating. The fact that others seeking homes may also be victims of petitioners'

⁸ Ever since fair housing litigation began, courts have uniformly accepted and endorsed the use of testers to investigate and prove allegations of housing discrimination. E.g., *United States v. Youritan Construction Company*, 370 F. Supp. 643, 647, n. 3 and 650 [and cases cited] (N.D. Cal. 1973), *aff'd as modified*, 509 F.2d 623 (9th Cir. 1975); *Smith v. Anchor Building Co.*, 536 F.2d 231, 234, n.2 (8th Cir. 1976); *Williamson v. Hampton Management Co.*, 339 F. Supp. 1146, 1148 (N.D. Ill. 1972); *Seaton v. Sky Realty Co.*, 372 F. Supp. 1322 (N.D. Ill. 1972), *aff'd*, 491 F.2d 634 (7th Cir. 1974); *Johnson v. Jerry Pals Real Estate*, 485 F.2d 528 (7th Cir. 1973). In *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486, 488 (E.D. N.Y. 1977), the court held that testers subjected to racial steering stated a claim under Title VIII. See also *Meyers v. Pennypack Woods Home Ownership Ass'n.*, 559 F.2d 894, 897-898 (3d Cir. 1977), holding that testers have standing in a § 1982 case. This Court has recognized standing on the part of testers in other civil rights contexts. See *Evers v. Dwyer*, 358 U.S. 202 (1958); *Pierson v. Ray*, 386 U.S. 547 (1967).

practices does not reduce the respondents' interests in residing in a stable, integrated neighborhood and in not being "panicked" out of Bellwood. The residents of this area should not be made to depend on suits by third parties who have been steered for protection of their rights, particularly since the actual homeseekers may not know they have been steered or may not have the interest or resources to fight petitioners' discriminatory practices. See *infra*, p. 25 and n. 12. As one commentator has concluded: "While a black who is denied access to housing can sue for damages and injunctive relief, in many cases it is the continuing residents who have the greatest 'stake' in enforcement of the fair housing laws." Note, *Racial Discrimination in the Private Housing Sector: Five Years After*, 33 Md. L. Rev. 289, 311 (1973).

In short, this case simply does not turn on the rights of testers or absent third parties. What is involved is the right of homeowners in a specific village whose racial make-up is being fashioned by discriminatory housing practices to protect their substantial economic and social interests in living in a stable, integrated community. "The real issue in this litigation is whether the real estate industry should be allowed to enter into the process and, for commercial advantage, artificially hasten or at least accelerate the rate of population turnover and the pace of racial change." *Zuch v. Hussey*, *supra*, 394 F. Supp., at 1033. Respondents must be allowed to raise this issue here, for it is *their* right to select and maintain their present homes without regard to racial considerations that petitioners are violating. Respondents' substantial stake in these cases makes it clear that the issue will be presented in an adversary context, which is "the gist of the question of standing." *Baker v. Carr*, 369 U.S. 186, 204 (1962).

I.

RESPONDENTS HAVE STANDING UNDER THE FAIR HOUSING ACT.

A. Racial Steering Violates The Fair Housing Act.

Since respondents' claims are brought under specific statutory provisions, the issue of their standing to assert those claims depends on whether they are "arguably within the zone of interests to be protected" by the federal fair housing laws. See *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970); *Barlow v. Collins*, 397 U.S. 159, 163 (1970). As long as the allegations of personal injury satisfy Article III requirements (see *infra* 52-56), "Congress may create a statutory right or entitlement the alleged deprivation of which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute [citing cases including *Trafficante*.]" *Warth v. Seldin*, 422 U.S. 490, 514 (1975). According to *Warth*:

Although standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal, *e.g.*, *Flast v. Cohen*, 392 U.S. 83, 99 (1968), it often turns on the nature and source of the claim asserted. The actual or threatened injury required by Art. III may exist solely by virtue of "statutes creating legal rights, the invasion of which creates standing"

There can be no question that the allegation that petitioners have engaged in racial steering by discriminating among prospective homeseekers on the basis of race states a cause of action under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*) and also under 42 U.S.C. § 1982. Specifically, petitioners' practices of directing similarly-situated white and black customers to different neighborhoods makes a person's "ability to buy property turn

on the color of [his] skin" in violation of § 1982 (*Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 443 (1968)) and makes housing unavailable because of race in violation of Title VIII. *E.g.*, *Zuch v. Hussey*, *supra*; *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service*, 422 F. Supp. 1071 (D. N.J. 1976) (both Title VIII and § 1982 violated); *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486 (E.D. N.Y. 1977); *United States v. Real Estate One*, 433 F. Supp. 1140 (E.D. Mich. 1977); *Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975) (both Title VIII and § 1982 violated); *United States v. Henshaw Bros., Inc.*, 401 F. Supp. 399 (E.D. Va. 1974); *United States v. Robbins*, P-H: Eq. Opp. Hsing. Rptr. ¶13,655 (S.D. Fla. 1974).⁹ The court in *Bergen County*, for example, held that racial steering constitutes a "clear violation of § 3604(a)" and noted that:

The real estate broker and the multiple listing service are crucial intermediaries between buyers and sellers of residential real estate. The complaint fairly pleads that the influence of these intermediaries extends far beyond any one meeting of the minds between an individual purchaser and an individual seller. The plaintiffs allege that these real estate intermediaries actively and passively mislead potential purchasers in an effort to preserve or extend segregated housing patterns. In such a situation the

⁹ Most of the courts that have held that racial steering violates Title VIII have done so under 42 U.S.C. § 3604(a), which makes it unlawful "to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin." Steering may also violate one or more of the other subsections of § 3604. See *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*, 429 F. Supp. at 488 (3604(b)'s prohibition of discrimination "in the provision of services" violated by steering); see also Note, *Racial Steering: The Real Estate Broker and Title VIII*, 85 Yale L.J. 808, 818, 821 (1976).

factor of racial prejudice which Congress sought to eliminate is not merely introduced into the housing market in a discrete incident. It is given an effect extending beyond any one transaction involving a single bigoted purchaser or seller. To insulate the intermediary from Title VIII liability is to retreat from the affirmative mandate of § 3604(a).

422 F. Supp. at 1075-1076.

In holding that racial steering violates the fair housing laws, federal courts have recognized that the intent of these laws is not merely to prevent discriminatory refusals to deal, but is to foster integrated communities for the benefit of both white and black residents and homeseekers. Congress declared in Title VIII that it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States" (42 U.S.C. § 3601), and the Supreme Court has made clear that the "language of the Act is broad and inclusive" and should be given a "generous construction" to effectuate its important national purpose of replacing "the ghettos by truly integrated and balanced living patterns." *Trafficante v. Metropolitan Life Insurance Co.*, *supra*, 409 U.S., at 209-212. See also *Barrick Realty, Inc. v. City of Gary, Indiana*, 491 F.2d 161, 164 (7th Cir. 1974); *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973).¹⁰

¹⁰ A similar concern underlies 42 U.S.C. § 1982. As this Court declared when it first construed § 1982 to prohibit housing discrimination: "When racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery." *Jones v. Alfred H. Mayer Co.*, *supra*, 392 U.S. at 442-443. The next year, the Court held that a white had standing to assert a § 1982 claim against a homeowners' group that prevented him from leasing his house to a black and reaffirmed that a "narrow construction of the language of § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded" by it. *Sullivan v. Little Hunting Park*, 396 U.S. 229, 238 (1969).

B. Respondents Have Suffered Direct Injuries Within The Zone Of Interests Intended To Be Protected By The Fair Housing Act As A Result Of Petitioners' Racial Steering Practices In The Bellwood Area.

The six individual respondents are white and black homeowners in the area affected by petitioners' racial steering practices, which they claim deprive them of their right to keep their homes without regard to illegal racial considerations and of the economic, social, and professional benefits of living in an integrated community. The starting point and focus of analysis for determining whether these claims are "arguably within the zone of interests to be protected" by the federal fair housing laws is the Supreme Court's decision in *Trafficante v. Metropolitan Life Insurance Co.*, *supra*. There, two tenants—one black and one white—in an apartment complex with 8200 residents brought suit under Title VIII, alleging that their landlord had discriminated against non-white applicants. The *Trafficante* plaintiffs claimed that the landlord's discrimination cost them the social benefits of living in an integrated community, deprived them of business and professional advantages that would have accrued from living with members of minority groups, and caused them to become residents of a white ghetto. In holding that the two tenants had standing to sue on their claims, the Court's unanimous opinion noted:

While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered. . . . The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community." 409 U.S., at 210-211.

The language of the Fair Housing Act, said the Court, manifests "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Id.*, at 209. Accordingly, the injuries claimed by the *Trafficante* plaintiffs, which were actually less substantial than those claimed here (see n. 6, *supra*), were held sufficient to confer standing.

The "direct objects" of petitioners' discrimination are actual homeseekers. But the people who are the injured victims of that discrimination are not limited to actual homeseekers, and their numbers surely include the Bellwood homeowners, whose community is being racially changed by petitioners. *Trafficante* means that anyone injured as a consequence of the defendant's discriminatory conduct has standing to sue under Title VIII, whether or not he is the "direct object" of that discrimination. Appropriate plaintiffs under *Trafficante* include "white home owners, anxious to stabilize the racial balance in their neighborhood before the 'tipping point' is reached, [who] realize that real estate agents are no longer showing white buyers the available houses in their neighborhood." See Note, *Racial Discrimination in the Private Housing Sector: Five Years After*, *supra*, 33 Md. L. Rev., at 313-314.

Homeowners in a specific community whose racial make-up is being fashioned by discriminatory housing practices assert interests at least as strong as did the plaintiffs in *Trafficante*.¹¹ Indeed, even apart from the

¹¹ See n. 6, *supra*. In addition to being deprived of their "Trafficante" right to live in an integrated community, respondents face other hardships as well. As the court pointed out in *Zuch v. Hussey*, *supra*, homeowners such as respondents may feel pressured into "panic selling" by "crime, overcrowding, depressed property values, and the fear of being 'left behind'"—the overall reduction of the "quality of life"—that are associated with rapid racial change in their neighborhood. 394 F. Supp., at 1032. See also cases cited in n.1, *supra*.

direct economic injuries caused by petitioners' racial steering practices, Bellwood homeowners would suffer more than the residents of the *Trafficante* housing development did. Residents of an all white housing complex need only look to the next residential facility for the interracial associations they desire, but the respondents may have to give up their homes in Bellwood and go to an entirely different area. A segregated building is less of a "ghetto" than a segregated neighborhood or community. *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*, 422 F. Supp., at 1081.

Thus, the lower courts have regularly held that residents of an area undergoing rapid racial change may challenge realtors' steering practices that lead to this change under the federal fair housing laws, regardless of whether the plaintiffs were actual homeseekers or not. *E.g.*, *Zuch v. Hussey*, *supra*; *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*; *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*; *Heights Community Congress v. Rosenblatt Realty*, 73 F.R.D. 1 (N.D. Ohio 1975); *Village of Park Forest v. Fairfax Realty Co.*, P-H:Eq. Opp. Hsing. Rptr. ¶13,699 (N.D. Ill. 1975) and P-H:Eq. Opp. Hsing. Rptr. ¶13,784 (N.D. Ill. 1976). In *Bergen County*, for example, the court held that individual residents of a segregated suburban area outside of New York City and their town had standing to challenge the steering practices of local realtors under Title VIII, because "all of the plaintiffs are within the zone of interests sought to be protected by § 3612 of the Fair Housing Act and all have standing to sue." *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*, 422 F. Supp., at 1083.

Residents' interest in the racial make-up of their community has often been held sufficient to give them standing to attack discriminatory actions that affect their area. *E.g.*, *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970); *South East Chicago Commission v. HUD*, 343 F. Supp. 63, 66-67 (N.D. Ill. 1972), *aff'd*, 488 F.2d 1119 (7th Cir. 1973); *Marin City Council v. Marin City Redevelopment Agency*, 416 F. Supp. 700 (N.D. Cal. 1975); *Fox v. HUD*, 416 F. Supp. 954, 956 (E.D. Pa. 1976). In *Shannon*, *supra*, for example, the Third Circuit held that white and black residents, businessmen, and representatives of private civic organizations in a Philadelphia neighborhood had standing to sue for an injunction against HUD's participation in a low income housing project which was about to be constructed. The complaint alleged that HUD's approval of the project would have "the effect of increasing the already high concentration of low-income blacks" in the area. 436 F.2d, at 812. Plaintiffs' standing was challenged on the ground that they were neither displaced residents nor potential occupants of any proposed project and that therefore their interests were too remote. The court stated:

We do not agree. Certainly the dispute which they seek to have adjudicated will be presented in an adversary context. *Flast v. Cohen*, 392 U.S. 83, 101 (1968). The test, for Article III purposes, is whether or not plaintiffs allege injury in fact. They do indeed. They allege that the concentration of lower income black residents in a 221(d)(3) rent supplement project in their neighborhood will adversely affect not only their investments in homes and businesses, but even the very quality of their daily lives.

Id., at 818. The fact that the *Trafficante* opinion explicitly quoted from this passage in describing the important role of private suits in enforcing Title VIII (409 U.S., at

211) further supports respondents' standing to sue here under the Fair Housing Act. See also *Walker v. Fox*, 395 F. Supp. 1303 (S.D. Ohio 1975); *United States v. L & H Land Corporation, Inc.*, 407 F. Supp. 576 (S.D. Fla. 1976).

Respondents' injuries are clearly not "indirect." They are comparable to the injuries alleged in *Trafficante*, which did not result from acts of discrimination directed against the plaintiffs, but rather from the discriminatory exclusion of non-whites from their housing complex and the resulting loss of plaintiffs' associational interests in racial integration. Those interests were injured regardless of the fact that the landlord had directed its discriminatory conduct against outsiders. Similarly, in *Shannon v. HUD*, *supra*, the plaintiffs were not the direct target of the defendant's conduct. In *Trafficante*, *Shannon*, and similar cases in which residents have made claims based on their interest in the racial make-up of their area, these claims have been held to be within the zone of interests created by the Fair Housing Act, which was intended to define standing as broadly as is permitted under Article III. See *Trafficante v. Metropolitan Life Insurance Co.*, *supra*, 409 U.S., at 209.

The fact that actual homeseekers may also be victims of petitioners' steering practices does not reduce respondents' interests in residing in a stable, integrated neighborhood and in not being "panicked" out of Bellwood. Homeowners in Bellwood should not be made to depend on suits by third parties who have actually been steered for protection of their rights, particularly since the actual homeseekers may not know they have been steered or may not have the interest or resources to

fight petitioners' discriminatory practices.¹² Respondents' interests are precisely those that the federal fair housing laws were intended to advance. To deny them standing would cripple those laws in steering cases and would severely impede the national policy of open, integrated housing mandated by Congress in the Fair Housing Act.

C. Standing Under § 3612 Is As Broad As Standing Under § 3610.

Petitioners seek to avoid the application of *Trafficante* to this case by drawing a distinction between Title VIII standing to sue after complaining to the Secretary of Housing and Urban Development pursuant to 42 U.S.C. § 3610, which they apparently concede would be available to respondents, and Title VIII standing to sue directly pursuant to 42 U.S.C. § 3612, which they argue

¹² A black person who is shown house listings in particular neighborhoods has no way of knowing what listings are being made available to whites and can therefore seldom detect racial steering. Accordingly, most of the cases involving steering have of necessity been brought either by the United States or by plaintiffs similarly situated to those in the present case, usually working with the assistance of testers. See cases cited p. 17-18, *supra*. "Citizen groups seeking to stabilize racial balance in a changing neighborhood have the interest in and knowledge of the situation over a period of time that is needed to substantiate charges of blockbusting, illegal solicitation, and other discriminatory real estate practices." Note, *Racial Discrimination in the Private Housing Sector: Five Years After*, *supra*, 33 Md. L. Rev., at 311-312. The fact that actual homeseekers may not know that they have been steered suggests an additional (though not the principal) reason for recognizing respondents' standing here. Thus, to the extent that actual homeseekers who have been steered by petitioners are not aware of or able to assert their own rights, respondents may be "the only effective adversary" of this illegal discrimination and thus should be permitted to assert the claims of these actual homeseekers as well as their own rights. *E.g.*, *Barrows v. Jackson*, 346 U.S. 249, 259 (1953); *Sullivan v. Little Hunting Park, Inc.*, *supra*, 396 U.S., at 237.

is too narrow to cover respondents' claims. The Court of Appeals correctly rejected this argument, which finds no support in the language of the statute, is refuted by the clear legislative history of the Act, and directly conflicts with the *Trafficante* holding.

1. By Its Terms, § 3612 Covers The Same Types Of Claims And Claimants As § 3610.

First of all, the Act, itself, does not distinguish between who may complain under § 3610 and who may sue under § 3612. Section 3610 provides for an administrative complaint by a "person aggrieved," who is defined as "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice." 42 U.S.C. § 3610(a). The Act defines a "discriminatory housing practice" as any "act that is unlawful under § 3604, § 3605, or § 3606." 42 U.S.C. § 3602(f). Similarly, § 3612 states that "[t]he rights granted by sections 3603, 3604, 3605, and 3606 may be enforced by civil actions" in appropriate federal and state courts. Thus, § 3612 authorizes direct court actions for all of the types of discriminatory housing practices that may be complained of under § 3610.

Petitioners' argument that "indirect victims" of discriminatory housing practices may complain under § 3610, but not under § 3612, is simply not based on anything found in the statute. Indeed, there is no limitation at all in the language of § 3612 with respect to who may sue under it. In the broadest possible terms, § 3612 authorizes civil actions to enforce "the rights granted" in § 3603, § 3604, § 3605, and § 3606. Nor do these substantive sections limit standing in any way. Rather than defining who may sue, § 3604, § 3605, and § 3606 simply declare "unlawful" a number of different types of dis-

criminatory housing practices. Thus, § 3612 authorizes a court action by anyone who is injured as a result of a violation of § 3604, § 3605, or § 3606, regardless of whether the violation was specifically directed against that person or not.

Petitioners make much of the fact that one part of one subsection of § 3604 requires that there first have been a "bona fide offer" before a violation can be established. That requirement is notably absent from the other prohibitions of § 3604(a) and, for that matter, from all of the other substantive provisions of the Act. Indeed, when the bona fide offer requirement was being debated, its own sponsor, Senator Allott, specifically noted that it applied only to limited sale or rental situations and that "the latter part of paragraph (a) is not conditioned upon a bona fide offer, because the amendment as offered concludes with the word 'or' rather than 'and.'" 114 Cong. Rec. 5516 (1968). Thus, in addition to outlawing refusals to sell or rent after the making of a bona fide offer, § 3604(a) also prohibits discriminatory refusals to negotiate and all other practices that "otherwise make unavailable or deny" housing "to any person because of race" This language, which is not limited by the bona fide offer requirement, is "as broad as Congress could have made it." *United States v. Youritan Construction Company, supra*, 370 F. Supp., at 648.

Furthermore, none of the other prohibitions of § 3604 include the bona fide offer limitation. Section 3604(b), for example, outlaws the discriminatory provision of housing services, and this subsection has been held to ban by racial steering in a private suit under § 3612. *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co., supra*. Section 3604(c), which prohibits statements that indicate any limitation or discrimination in housing based on race, has been enforced

in a direct private action by plaintiffs who were not themselves homeseekers. *Mayers v. Ridley*, 465 F.2d 630 (D.C. Cir. 1972) (*en banc*). Section 3604(d) is of obvious relevance to racial steering, because it makes unlawful misrepresentations concerning the availability of housing, not just for sale or rental, but also "for inspection." Section 3604(e) prohibits "blockbusting" and has been used in a § 3612 suit by homeowners not themselves in the market for a new home to enjoin real estate agents from trying to racially change their community. *Brown v. State Realty Company*, 304 F. Supp. 1236 (N.D. Ga. 1969).

The congressional desire to avoid "harassment" of property owners that petitioners say underlies the bona fide offer requirement in the first part of § 3604(a) certainly does not extend to sanctioning the practice of racial steering by real estate agents. If anyone is being harassed in this case, it is the Village of Bellwood and its homeowners. Obviously, the bona fide offer requirement was intended to protect a seller or lessor from having his property encumbered for a period of time by a false offer. Whatever legitimate protection might be afforded a property owner by this phrase, it certainly does not exempt a realtor who engages in racial steering from Title VIII's coverage.

Although there are no differences between § 3610 and § 3612 in terms of the substantive claims that may be brought under them or the class of plaintiffs that may bring those claims, the two sections do provide for different types of relief. In a § 3612 suit, the court may grant injunctive relief and "may award to the plaintiff actual damages and not more than \$1,000 punitive damages," as well as court costs and reasonable attorney fees in certain circumstances. 42 U.S.C. § 3612(c). In a suit growing out of a § 3610 complaint, however, a court

that finds that a discriminatory housing practice has occurred is only authorized to "enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate." 42 U.S.C. § 3610(d). At least one court has interpreted this provision to mean that damages are not available in an action brought under § 3610. *Brown v. Ballas*, 331 F. Supp. 1033 (N.D. Tex. 1971). See also Note, *supra*, 33 Md. L. Rev., at 300-301; Note, *Discrimination in Employment and in Housing: Private Enforcement Provisions of the Civil Rights Acts of 1964 and 1968*, 82 Harv. L. Rev. 834, 839, 861 (1969). Therefore, petitioners' suggestion that respondents may only bring their claims pursuant to § 3610 amounts to an effort to avoid liability for the financial losses that their steering practices have imposed upon respondents. Nothing contained in Title VIII requires this ludicrous result.

2. The Legislative History Of Title VIII Demonstrates That § 3612 Was Intended To Be Independent Of And Not Limited By § 3610.

There is not a single suggestion in the legislative history of the Fair Housing Act that standing under § 3612 was designed to be narrower than standing under § 3610.¹³ Throughout the legislative history, the administrative and judicial remedies were described as being alternatives to one another against the same kinds of conduct and for the same kinds of complainants. Indeed, the legislative history indicates that the words "person aggrieved" in § 3610 were intended to limit standing, not expand it, so that their omission from § 3612 suggests at least equal standing to that accorded to complainants under § 3610.

¹³ For descriptions of the legislative history of Title VIII, see Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 Washburn L.J. 149 (1969) and Prentice-Hall, *Historical Overview—Equal Opportunity in Housing*, P-H: Eq. Opp. Hsing. Rptr. ¶ 2301, pp. 2312-2314 (1973).

The legislative history of Title VIII goes back to 1966, when bills containing "open housing" provisions were introduced in both the House and Senate. The 1966 bills, H.R. 14765 and S. 3296, originally authorized private enforcement only by the institution of a direct court action, like § 3612 now provides for. There was no provision in either the House or the Senate bill for an administrative remedy. During the committee debates, the question of who would have standing to sue was raised in both the House and the Senate. In the House, Representative Cramer criticized the bill on the ground that Section 406—the precursor of § 3612—simply provided that the "rights granted may be enforced by civil action," without *limiting* standing to "persons aggrieved." Mr. Cramer observed that the right to sue under the comparable public accommodations statute was limited to persons aggrieved and that omission of this limitation indicated that a third party might bring the suit on the victim's behalf. Attorney General Katzenbach stated that he had no objection to "persons aggrieved" being inserted, but that he thought this unnecessary. *Hearings on H.R. 14765*, House Committee on Judiciary, 89th Congress, 2nd Session (May 5, 1966) at p. 1203. The words "persons aggrieved" were not inserted. In Representative Cramer's view, this made standing broader than if the words had been included; in Mr. Katzenbach's, it made no difference. Both views are directly contrary to petitioners' claim that the inclusion of the words "persons aggrieved" in § 3610 made standing under that section broader than it is under § 3612. See also Chandler, *Fair Housing Laws: A Critique*, 24 Hastings L.J. 159, 181 (1972) (standing under § 3610 is "restricted" to "persons aggrieved").

The broad scope of the precursor of § 3612 also emerges from a discussion during the Senate Hearings

between Senator Ervin, Chairman of the Judiciary Committee, and Mr. Emlen, a representative of the National Association of Real Estate Boards. Both men were opposed to the proposed fair housing legislation. In reference to Section 406, the following exchange took place:

Senator Ervin. It doesn't even have a requirement that the plaintiff shall have been refused the rental or purchase of real estate, does it?

Mr. Emlen. That's right.

Hearings on S. 3296, Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 89th Congress, 2nd Session, pp. 395-396 (1966).

Later in 1966, Congress began considering the possibility of adding administrative remedies to direct court actions as an alternative method of private enforcement. The initial proposal was to create a Fair Housing Board, with power similar to that found in the National Labor Relations Board. See Prentice-Hall, *supra*, ¶ 2301, at pp. 2312-13; see also 112 Cong. Rec. 17122-23. The Board would be authorized to adjudicate complaints of housing discrimination which were to be filed with HUD and which HUD was unable to resolve through conciliation. See *Report [to accompany H.R. 14765] of the Committee on the Judiciary*, No. 1678, 89th Congress, 2nd Session, pp. 9-12.

Testimony at the hearings and debate on the House floor indicate that the purpose of establishing an alternative administrative remedy was to provide an expeditious method of resolving the smaller, simpler complaints of housing discrimination without the necessity of bringing a federal lawsuit. A statement prepared by Congressman Conyers, a member of the Judiciary Committee who supported the Fair Housing Board proposal, sets forth his analysis of the function of the Board:

Q. Why do we need such an administrative process?

A. Experience with comparable State and local agencies repeatedly has shown that the administrative process is quicker and fairer. It more quickly implements the rights of the person discriminated against and also quickly resolves frivolous and otherwise invalid complaints. Conciliation is easier in an informal administrative procedure than in the formal judicial process. Also individual court suits would place a greater burden of expense, time, and effort on not only the plaintiff but on all other parties involved, including the seller, broker and mortgage financier, and on the judicial system itself.

112 Cong. Rec. 18402; see also 112 Cong. Rec. 18405. Mr. Conyers also explained that the purpose of establishing the Board was to provide the small homeowner and broker "with a forum that will not involve expensive litigation and court procedures." 112 Cong. Rec. 18409. See also *ibid* (remarks of Representative Vivian). Thus, Congress intended not only that there would be no distinction between who might bring an action under the administrative procedure as compared to the judicial procedure, but also that the administrative procedure would be available for the less significant, less complicated complaints, while the courts would continue to have jurisdiction to resolve such cases if the complainant so elected. Indeed, Congressman McClory opposed the amendment which would have created the Fair Housing Board, because it created a "duplicate manner of enforcement" with the judicial method. See 112 Cong. Rec. 18405; see also *id.*, at 18401.

The 1966 bill was passed by the House, but was blocked in the Senate by a filibuster. See Prentice-Hall, *supra*, ¶2301, at p. 2313, and 112 Cong. Rec. Index 1183. Similar legislation was again proposed in 1967.

The 1967 proposals (S. 1026 and H.R. 5700) provided for an administrative procedure within HUD and suits by the Attorney General in pattern and practice cases, as well as direct action by private complainants. HUD was to have the authority, among other things, to issue cease and desist orders. The fair housing title, however, was eventually deleted from the 1967 civil rights bill (H.R. 2516) that was ultimately approved by the House Judiciary Committee and passed by the full House.

When H.R. 2516 came to the floor of the Senate in early 1968, Senators Mondale and Brooke reintroduced a fair housing title as an amendment to the bill. See Dubofsky, *supra*, 8 Washburn L.J., at 152. This amendment, which was based on a bill (S. 1358) previously sponsored by Senator Mondale (see Dubofsky, *supra*, 8 Washburn L.J., at 149 and n. 3), proposed both that HUD would have "cease and desist" authority and that a plaintiff would have direct access to the federal courts. 114 Cong. Rec. 2270. On February 28, 1968, Senator Dirksen proposed a substitute fair housing amendment, which contained the enforcement procedures that were ultimately enacted in Title VIII. 114 Cong. Rec. 4568-4573; Dubofsky, *supra*, 8 Washburn L.J., at 156-157. The Dirksen substitute maintained intact the direct action provision that was to become § 3612, but it eliminated HUD's "cease and desist" power in favor of the "informal methods of conference, conciliation, and persuasion" that are now authorized by § 3610. The Senate passed the Dirksen bill substantially in this form on March 11, 1968 (114 Cong. Rec. 5992), and the House enacted it on April 10, 1968. 114 Cong. Rec. 9620-9621.

During the floor debate in the House on the "Dirksen Amendment", Congressman Celler, the Chairman of the Judiciary Committee, explained that the bill provides three methods of obtaining compliance: administrative

conciliation, private suits, and suits by the Attorney General. 114 Cong. Rec. 9560. His explanation did not classify any rights as being enforceable exclusively by § 3610 nor did it differentiate between different classes of plaintiffs or suggest that the § 3610 procedure is for some kinds of complainants and the § 3612 procedure for others. See 114 Cong. Rec. 9560-61. That no distinction was intended to exist as to eligible plaintiffs and remedies as between § 3610 and § 3612 was also recognized by Congressman Gerald Ford, who introduced an analysis prepared for the Judiciary Committee that described § 3612 as "an alternative to the conciliation—then litigation approach" contemplated by § 3610. 114 Cong. Rec. 9612.

In summary, there is no suggestion in any of the legislative history of Title VIII that a broader class of plaintiffs might utilize the administrative process of § 3610 than would be eligible for direct litigation under § 3612. Following this clear mandate, the lower courts have treated § 3610 and § 3612 as independent, alternative remedies in a variety of Title VIII contexts. See, e.g., *Howard v. W. P. Bill Atkinson Enterprises*, 412 F. Supp. 610, 611 (W.D. Okla. 1975); *Miller v. Poretsky*, 409 F. Supp. 837, 838 (D.D.C. 1976); *Young v. AAA Realty Company of Greensboro, Inc.*, 350 F. Supp. 1382, 1384-85 (N.D. N.C. 1972); *Crim v. Glover*, 338 F. Supp. 823, 825 (S.D. Ohio 1972); *Johnson v. Decker*, 333 F. Supp. 88, 90-92 (N.D. Cal. 1971); *Brown v. Lo Duca*, 307 F. Supp. 102 (E.D. Wis. 1969). The commentators have also agreed that a plaintiff may file a § 3612 complaint without first pursuing the administrative enforcement procedures of § 3610. See Chandler, *supra*, 24 Hastings L.J., at 180; Note, *supra*, 82 Harv. L. Rev., at 839, 856-57, 862; Dubofsky, *supra*, 8 Washburn L.J., at 163 (1969); Note, *The Federal Fair Housing Requirements: Title VIII of*

the 1968 Civil Rights Act, 1969 Duke L.J. 733, 753 (1969) ("The language used [in § 3610] is permissive, not obligatory, and the complainant may forego the administrative assistance available at HUD and file a civil action in any state, local or appropriate federal district court.")

Here, the Court of Appeals followed this overwhelming consensus of authority in holding "that there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612." 569 F.2d, at 1019; *Appendix* 162. This decision is supported by the fact that HUD, whose construction of the statute "is entitled to great weight" (*Trafficante, supra*, 409 U.S., at 210), makes no distinction between the two classes of plaintiffs under § 3610 and § 3612. See 24 C.F.R. § 105.16 (1976). The Seventh Circuit's holding also accords with the decisions made by all of the other federal courts that have faced this issue (see cases cited at n. 4, *supra*), with the sole exception of the Ninth Circuit's ruling in *TOPIC*.¹⁴

¹⁴ In *TOPIC*, the Ninth Circuit premised its holding that standing to bring suits pursuant to § 3612 is more restrictive than standing to complain under § 3610 on what it perceived to be the complex "statutory design" of the Fair Housing Act. 532 F.2d, at 1275. Although the court apparently made no inquiry into the legislative history of the statute and even though the opinion makes no reference to this history, the Ninth Circuit nevertheless reached two incredible conclusions concerning the congressional intent underlying Title VIII: (1) that since § 3610 contains a broad definition of "person aggrieved" and since § 3612 has no definition, § 3612 must be narrower; and (2) that the more complex cases dealing with the elimination of racially segregated communities, rather than individual grievances, were designed to go through HUD and be handled pursuant to § 3610, whereas § 3612 was designed to be limited to the simpler individual complaints. *Ibid.* These conclusions, which provide the foundation for the *TOPIC* decision, are directly contrary to the clear legislative history of the Act. See 31-35, *supra*.

The fact that § 3610 and § 3612 provide for alternative, independent remedies for the same types of claims does not mean that § 3610 is unimportant. There are a number of reasons why a victim of housing discrimination might choose to file a complaint with HUD under § 3610 rather than initiate a lawsuit under § 3612. First of all, the requirements of filing a lawsuit, including having to hire an attorney, may seem too difficult or expensive to the complainant. Second, he may simply be the kind of person who prefers conciliation through the good offices of a third party to the adversary battle of courtroom litigation. Third, he may not know whether he has actually been discriminated against or whether his rejection was for some legitimate reason, so he may seek a § 3610 conference with the potential defendant to see if a suit is justified. Fourth, if the complainant's main goal is to secure the apartment or home denied him, he might rationally believe that the respondent is more likely to deal with him on a fair and friendly basis if § 3610 rather than § 3612 is used. Furthermore, there may be some respondents, such as large developers who are dependent on federal financing for their projects, who may be more responsive to a HUD complaint than to a judicial proceeding. (This leverage is not available here, of course, since real estate brokers are licensed by the states and are neither regulated by nor dependent on the federal government.)

Whatever the complainant's reasons for choosing the § 3610 route, it is clear from the large and growing number of Title VIII complaints received by HUD that § 3610 is an important alternative to § 3612. See, e.g., U.S. Department of Housing and Urban Development, *1976 Statistical Yearbook* 24 (3,336 complaints received by HUD under Title VIII in 1976). Thus, petitioners'

suggestion (*Brief for Petitioner* 26) that § 3610 will "atrophy" if victims of housing discrimination are permitted direct access to court under § 3612 is simply not borne out by actual experience.

Indeed HUD's large backlog of § 3610 cases means that the alternative enforcement mechanism of § 3612 is vitally important in cases where time is of the essence. As the court noted in *Brown v. Lo Duca*, 307 F. Supp. 102, 103 (E.D. Wis. 1969):

Of course, by the time the complainant has gone the § 3610 route, the housing unit involved would in all likelihood have been rented or sold. Congress, recognizing that § 3610 might not be an effective remedy, then set up an alternative procedure for one who claims to have been discriminated against in the sale or rental of housing. The alternative remedy was provided for in § 3612.

Similarly, when realtors attempt to illegally manipulate a community by engaging in racial steering, prompt judicial action under § 3612 may be necessary, not only to stop those practices, but to show the residents of the community that the law can protect them from being panicked out of their homes. It is significant in this regard that Title VIII provides that § 3612 cases shall be heard "at the earliest practicable date" and shall be "in every way expedited" (42 U.S.C. § 3614), but this requirement does not apply to § 3610 complaints.

Title VIII applies to all sorts of discriminatory housing practices, from a simple refusal deal to a massive blockbusting campaign. By providing alternative enforcement mechanism in § 3610 and § 3612, Congress obviously intended for the individual victim of discrimination to be able to choose which technique would be most helpful to him. Title VIII gives the Bellwood

homeowners and their Village¹⁵ the absolute right to decide for themselves whether to file under § 3610 or § 3612, or, for that matter, under both sections. See *Young v. AAA Realty of Greensboro, Inc.*, 350 F. Supp. 1382, 1386-1387 (M.D. N.C. 1972); cf., *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47-49 (1974) (Title VII). The choice belongs to the complainants. As the court held in *Crim v. Glover*, 338 F. Supp. 823, 825 (S.D. Ohio 1972):

Congress intended the remedies provided for in Sections 810 and 812 to be separate, distinct and in the alternative and we so hold. Consequently, plaintiffs have the right to bring suit in federal district court alleging racial discrimination in the rental of housing under Section 812, before exhausting or attempting to exhaust the remedies provided for in Section 810.

¹⁵ At oral argument in the Court of Appeals, petitioners for the first time argued that the Village lacked standing, because it was not a "person" as defined in 42 U.S.C. § 3602(d). See 569 F.2d, at 1020, n. 8; Appendix 163. The Court of Appeals correctly rejected this argument, noting that § 3602(d) broadly defines "person" to include corporations such as the Village. *Ibid.* Now, also for the first time, petitioners attack the Village's standing on the ground that, even though it is a "person," it is not a "private person," as that phrase is used in the heading of § 3612. See *Brief for Petitioners* 17-18, n. 3. This argument is also without merit, since nothing in the body of § 3612 contains any such limitation. See *Brotherhood of Railroad Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528-529 (1947). The use of "private person" in the heading of § 3612 was obviously meant simply to distinguish enforcement actions under this section from public enforcement actions by HUD under § 3610 and by the Attorney General under § 3613. Congress knew how to provide for exemptions when it wrote Title VIII (see 42 U.S.C. § 3603, § 3607), and if it had meant to carve out an exception to the broad standing authorized by § 3612 for municipal corporations, it would have done so explicitly. In any event, petitioners' argument comes too late, for this Court generally does not consider issues that were not presented to nor considered by the Court of Appeals. See, e.g., *Adickes v. S. H. Kress and Co.*, 398 U.S. 144, 147, n. 2 (1970) and cases cited.

Whatever value § 3610 may seem to have for an individual complainant, it is certainly not more effective than a § 3612 suit in protecting a community from racial steering. If there is one thing that the legislative history of Title VIII makes clear, it is that "Congress contemplated a very limited role for HUD." *Green v. Ten Eyck*, 572 F.2d 1233, 1242 (8th Cir. 1978). As noted above, (pp. 32, 34), some of the original fair housing proposals considered by Congress did include "cease and desist" power in administrative complaints. The principal change made in these proposals by Senator Dirksen's substitute amendment, which eventually became Title VIII, was to strip HUD of this authority. See Dubofsky, *supra*, 8 Washburn L. J., at 157 and 163. As this Court noted in *Trafficante*, the statute gives HUD "no power of enforcement." 409 U.S., at 210. See also Chandler, *supra*, 24 Hastings L. J., at 212 ("enforcement powers of HUD are too limited and ineffectual"); Note, *supra*, 1969 Duke L.J., at 762 (Title VIII's biggest weakness is the "complete lack of enforcement authority given to HUD.") and 770-71; Note, *supra*, 82 Harv. L. Rev., at 848. It is ridiculous to suggest, as petitioners do, that the Congress that intended Title VIII "to replace the ghettos by truly integrated and balanced living patterns" (*Trafficante*, *supra*, 409 U.S., at 211) would limit those in respondents' position to their § 3610 remedies. "Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits" under § 3612. *Ibid.*

Petitioners' argument (*Brief for Petitioners* 20-21, 26) that Congress intended to require victims of housing discrimination to pursue state and local remedies before filing a § 3612 suit is equally ludicrous. For one thing, Congress was all too aware of the role local governments

had played in creating and maintaining segregated housing conditions in the first place. As Senator Mondale, the principal sponsor of Title VIII, noted:

Negroes who live in slum ghettos, however, have been unable to move to suburban communities and other exclusively White areas. In part, this inability stems from a refusal by suburbs and other communities to accept low-income housing An important factor contributing to exclusion of Negroes from such areas, moreover, has been the policies and practices of agencies of government at all levels.

114 Cong. Rec. 2277. See also *id.*, at 2279-80, 2698-2703, and 3422 (remarks of Senator Mondale), and 2281 and 2527-28 (remarks of Senator Brooke); *Mayers v. Ridley*, *supra*, 465 F.2d, at 632 (Wright, J., concurring).

Indeed, an example of how local governments can oppose enforcement of fair housing is provided by one of the cases petitioners cite, *Hunter v. Erickson*, 393 U.S. 385 (1969). In *Hunter*, the Supreme Court held that the City of Akron, Ohio violated the Equal Protection Clause when it amended its charter to prevent the city council from implementing any ordinance banning housing discrimination. Akron had argued that passage of Title VIII mooted the case, but Justice White's opinion noted that the Fair Housing Act specifically preserved state and local fair housing laws. *Id.*, at 388, n. 1 (quoting 42 U.S.C. § 3615).¹⁶ Incredibly, petitioners cite *Hunter* to support their argument that Congress intended to defer to state and local authorities in the enforcement of Title VIII. In fact, *Hunter* proves just the opposite: while

¹⁶ This section also declares invalid any local law "that purports to require or permit any action that would be a discriminatory housing practice under this title" (42 U.S.C. § 3615), thus providing further evidence of Congress' concern that housing discrimination sanctioned by local governments be eliminated by Title VIII.

showing how recalcitrant a city can be in providing for fair housing, *Hunter* establishes that Title VIII cannot be used to avoid the requirements of any other housing discrimination law.

Petitioners' "local control" argument is not only erroneous, it is irrelevant in this case. Even if respondents had filed under § 3610 instead of § 3612, HUD would not have referred the matter under § 3610(c), because there is no "State or local fair housing law [that] provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in Title VIII." 42 U.S.C. § 3610(c). Illinois does not have a fair housing law. The Bellwood ordinance, which petitioners have appended to their brief, obviously does not provide "substantially equivalent" rights and remedies. See, *e.g.*, Sec. 37.4 (*Brief for Petitioners*, Appendix 11) (penalty for violating the ordinance limited to a \$500 fine, which is presumably payable to the Village, not to the complainant). Indeed, petitioners' suggestion that respondents should not be allowed to use § 3612 because the Bellwood ordinance provides sufficient protection for them has a certain "Alice in Wonderland" ring to it. Who, after all, knows more about the rights and remedies available under the Bellwood ordinance than the Village of Bellwood, itself? By filing these suits, the Village has in effect announced that it believes its ordinance alone is not sufficient to stop petitioners' steering practices and that Bellwood and its residents need the protection of "the powerful remedy provided by Section 3604 and 3612." See *Brief for Petitioners* 33.

3. *Trafficante* Establishes That Respondents Have Standing Under § 3612.

In *Trafficante*, *supra*, the Supreme Court determined that private suits were the "main generating force" to bring about compliance with Title VIII. 409 U.S., at 211. Thus, petitioners' claim that standing under § 3610 is broader than standing under § 3612 is directly at odds with the basic rationale of the *Trafficante* decision. Their argument also conflicts with the actual holding of *Trafficante*, which was decided under § 3612 as well as § 3610.

The two original plaintiffs in *Trafficante* brought suit pursuant to § 3610, § 3612, and 42 U.S.C. § 1982, alleging that their landlord's discriminatory practices interfered with their opportunity for interracial association and with the professional and social benefits of living in an integrated community. Complaints in intervention were filed by individual and organizational plaintiffs under §§ 3612 and 1982. Plaintiffs in intervention had not complained to HUD as had the original plaintiffs, and their only possible basis for standing under Title VIII was § 3612. The District Court dismissed the action, holding that

plaintiffs and plaintiffs in intervention have no such generalized standing as they assert to enforce the policies of the Act. More specifically, they are not 'persons aggrieved' under § 810 of the Act, 42 U.S.C. § 3610(a), and therefore may not maintain this suit under § 812, 42 U.S.C. § 3612, or under 42 U.S.C. § 1982.

Trafficante v. Metropolitan Life Insurance Co., 322 F. Supp. 352, 353 (N.D. Cal. 1971). On appeal by both plaintiffs and plaintiffs-intervenors, the Court of Appeals for the Ninth Circuit identified the question

presented under Title VIII: "Are plaintiffs¹⁷ 'persons aggrieved' within the meaning of section 3610 and 3612?" *Trafficante v. Metropolitan Life Insurance Co.*, 446 F.2d 1158, 1161 (9th Cir. 1972). After separately considering the provisions of § 3610 and § 3612, the Ninth Circuit affirmed, holding that "it was the intent of Congress to provide . . . through sections 3610 and 3612 methods of redress for persons who are the objects of discriminatory housing practices." 446 F.2d, at 1162. The court defined the action as a private "pattern and practice" suit and held that only the Attorney General may bring "pattern and practice" type suits.

The Supreme Court granted *certiorari*, thereby accepting for review the question whether plaintiffs, who had sued under § 3610, § 3612, and § 1982, and intervenors, who had sued only under § 3612 and § 1982, had standing to bring the action. This Court unanimously rejected the reasoning of the courts below and held that plaintiffs had standing under the 1968 Fair Housing Act. While the Court explicitly stated that it was unnecessary to reach the question of standing to sue under § 1982 (409 U.S., at 209, n.8), it held that standing was present to assert all claims "[w]ith respect to suits brought under the 1968 Act" (*Id.*, at 209), which, as has been shown, included claims both under § 3610 and claims under § 3612. Had the Court intended to leave undecided the claims under § 3612—the *only* claims under the 1968 Act which had been asserted by the plaintiffs in intervention—it would surely have included such a limitation in the footnote which excludes from con-

¹⁷ In footnote 2 to its opinion, the Court of Appeals explained that "except as otherwise stated, the plaintiffs and plaintiffs in intervention will be referred to collectively as plaintiffs." 446 F.2d, at 1160.

sideration claims under § 1982.¹⁸ Moreover, the paragraph of the Court's opinion that accords broad standing under the 1968 Act to persons complaining of injury to their opportunity for interracial association follows a discussion of the Act which explicitly recognizes the direct judicial remedy provided by § 3612.

Even if *Trafficante* does not "flatly control this case, . . . its thrust and rationale plainly suggest that the individual plaintiffs and the Village of Bellwood have standing." 569 F.2d, at 1018-1019; *Appendix* 160. The reasoning underlying the Supreme Court's decision in

¹⁸ See *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*, where the court concluded that *Trafficante* involved both § 3610 and § 3612:

The original complaint was framed in terms of both sections as well as 42 U.S.C. § 1982, and subsequent intervenors filed complaints solely under §§ 3612 and 1982. Faced with this procedural posture of the case, the Ninth Circuit in *Trafficante* held that none of the three sections upon which plaintiffs relied conferred standing on the plaintiffs because, as current renters rather than as those seeking to rent, they were not direct victims of the alleged discriminatory housing practices. The Supreme Court reversed on the ground that, for "suits brought under the 1968 [Fair Housing] Act," Congress had defined standing as broadly as is constitutionally permissible. 409 U.S. at 209.

Although the Supreme Court focused on § 3610 in *Trafficante*, it mentioned § 3612 without distinguishing it. The Court's failure to do so, particularly since it declined to reach the question of standing under § 1982, *id.* at 209 n. 8, lends support to the view that the Court's ruling extends to both §§ 3610 and 3612. See *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*, 422 F. Supp. at 1082. In fact, this was the understanding of the district court in *Trafficante* on remand and of at least one other court which subsequently considered the question. See *Village of Park Forest v. Fairfax Realty Co.*, P-H EOH ¶13,699 (N.D. Ill. 1975).

429 F. Supp., at 490.

Trafficante applies in all respects to suits brought pursuant to § 3612 as well as those under § 3610. Moreover, in view of the Court's references to the "enormity of the task of assuring fair housing" and to the Congressional intent "to replace the ghettos by truly integrated and balanced living patterns" the suggestion that § 3612 should be narrowly construed goes against the grain of the entire opinion. If the task is "enormous" and is to be primarily carried out by private litigants, it cannot be accomplished by reading narrowly the one section which deals solely with private litigation.

II.

RESPONDENTS HAVE STANDING UNDER § 1982.

Having held that the Village of Bellwood and the six individual respondents have standing under Title VIII, the Court of Appeals decided that there was "no need to consider standing under § 1982 separately. See *Trafficante*, *supra*, 409 at 209 n.8." 569 F.2d, at 1017, n. 4; *Appendix* 157. Thus, the standing question under § 1982 need not be reached here, unless this Court decides that respondents lack standing under the Fair Housing Act. Obviously, respondents believe that this eventuality should not occur, but if it does, the Court should hold that the Bellwood homeowners and their Village have standing under § 1982.

The allegation that petitioners engaged in racial steering by directing black homeseekers to one area and similarly situated white homeseekers to other areas states a cause of action under § 1982. See n. 10 and cases cited at page 19, *supra*. Section 1982 would be "practically nullified" if it were not construed to prohibit discriminatory misrepresentations concerning the availability of housing. See Morris and Powe, *Constitutional and Statutory Rights to Open Housing*, 44

Wash. L. Rev. 1, 83 (1968). Furthermore, whites as well as blacks may sue if they are injured by racial discrimination that violates § 1982. *Cf.*, *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976) (whites' claim under § 1981 upheld).

It is true, as petitioners point out (*Brief for Petitioners* 37), that "§ 1982 is not a comprehensive open housing law." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968). As Justice Stewart's opinion in *Jones* makes clear, however, this statement simply refers to the fact that § 1982 deals only with racial discrimination. Unlike Title VIII, § 1982 does not prohibit discrimination based on religion or national origin. *Ibid.* Unlike Title VIII, it does not specifically cover discriminatory advertising or financial arrangements. *Ibid.* Unlike Title VIII, it does not provide for enforcement by HUD, the Attorney General, or any other federal agency. *Id.*, at 413-414.

Section 1982 is certainly not less "comprehensive" than Title VIII, however, when a private suit based on racial discrimination in housing is involved. *Cf.*, *Washington v. Davis*, 426 U.S. 229, 248-252 (1976) (§ 1981 standards in race discrimination cases comparable to Title VII standards). Indeed, in some instances, § 1982 is more comprehensive than Title VIII, because Title VIII is subject to a number of exemptions (see 42 U.S.C. § 3603, § 3607) and to a short, 180-day statute of limitations (see 42 U.S.C. § 3610, § 3612). Since § 1982 is independent of and not subject to these limitations in the Fair Housing Act (see *Jones*, *supra*, 392 U.S., at 416-417, n. 20), the lower courts have often upheld a § 1982 claim of racial discrimination in housing, even where Title VIII would not apply. See, e.g., *Hickman v. Fincher*, 483 F.2d 855 (4th Cir. 1973); *Meyers v. Pennypack Woods Home Ownership Ass'n.*, 559 F.2d 894 (3d Cir. 1977); *Morris v. Cizek*, 503 F.2d 1303 (7th Cir. 1974);

Johnson v. Zaremba, 381 F. Supp. 165, 167 (N.D. Ill. 1973) [and cases cited]; see also 42 U.S.C. § 3615; *cf.*, *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975) (§ 1981 independent of Title VII). These decisions carry out the mandate of this Court in *Jones* and *Sullivan v. Little Hunting Park*, *supra*, which concluded that a "narrow construction of the language of § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded" by it. 396 U.S. at 238.¹⁹ Since Title VIII in no way limits § 1982, the petitioners' argument that respondents' standing under § 3612 is narrower than it is under § 3610 simply does not apply to respondents' right to sue under § 1982.

Further, by its terms, § 1982 guarantees the right to "hold" and "sell" real property, as well as the right to purchase, lease, convey, and inherit it, free from racial discrimination. In *Tillman v. Wheaton-Haven Recreation Ass'n.*, 410 U.S. 431 (1973), the Supreme Court unanimously held that § 1982 prohibited a swimming club from discriminating against a black couple who lived in the geographic area from which the club derived its white members. Even though Dr. and Mrs. Press already owned a house and were neither in the market to sell that home or to buy a new one, Justice Blackmun's opinion pointed out that losing the benefits of club membership harmed their property rights under § 1982

¹⁹ In *Sullivan*, the Supreme Court held that a white homeowner who was expelled from a recreational association for leasing his home to a black had standing to assert a § 1982 claim and that damages were available as a remedy under § 1982. 396 U.S., at 237-240. Sullivan's expulsion for advocating his black tenant's cause was considered punishment "for trying to vindicate the rights of minorities protected by § 1982. Such a sanction would give impetus to the perpetuation of racial restrictions on property." *Id.*, at 237. Similarly, here the Village of Bellwood is being injured by petitioners' steering practices, and since it may be "the only effective adversary" of those practices (see n. 12, *supra*), it has standing to challenge them under § 1982.

in a number of ways. For example, the price that the plaintiffs would be able to sell their house for might be reduced by the fact that the Presses could not assure their purchaser of an option for membership in the club. *Id.*, at 438.

Similarly the automatic waiting list preference given to residents of the favored area may have affected the price paid by the Presses when they bought their home. Thus, the purchase price to them, like the rental paid by Freeman in *Sullivan*, may well reflect benefits dependent on residency in the preference area. For them, however, the right to acquire a home in the area is abridged and diluted.

When an organization links membership benefits to residency in a narrow geographical area, that decision infuses those benefits into the bundle of rights for which an individual pays when buying or leasing within the area. The mandate of 42 U.S.C. § 1982 then operates to guarantee a non-white resident who purchases, leases, or holds this property, the same rights as are enjoyed by a white resident.

Ibid. Here, the mandate of § 1982 operates to guarantee respondents' right to "hold" their homes in Bellwood free from the economic losses threatened by petitioners' racial steering, and also guarantees respondents' right, should they choose to sell, to a full market for their homes that is not limited by racial discrimination.

III.

RESPONDENTS HAVE MET THE ARTICLE III AND "JUDICIAL SELF-GOVERNANCE" REQUIREMENTS OF STANDING.

In *Trafficante, supra*, this Court unanimously held that being deprived of the benefits of living in an integrated community is "[i]ndividual injury or injury in fact" sufficient to satisfy the requirements of standing. 409 U.S., at 209. Since the Article III requirements were met in *Trafficante*, it necessarily follows that the same constitutional standards are satisfied here, since respondents' claims allege injury at least as great as was present in *Trafficante*. See *supra*, pp. 11-12 and n. 6. As the Court of Appeals held, "there is no real doubt" that respondents have alleged "actual or threatened injury to [themselves] that is likely to be redressed or avoided by a favorable decision. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976); *Warth, supra*, 422 U.S. at 498, 505 (1975)." 569 F.2d, at 1016; *Appendix* 155. Indeed, even petitioners in the District Courts and those courts, themselves, assumed as much, when they took the position that the case should be decided on the basis of their interpretation of Title VIII, since that statutory issue would not have been reached unless the "threshold requirement imposed by Art. III" had been met. *O'Shea v. Littleton*, 414 U.S. 488, 493 (1974). See 569 F.2d, at 1016, n. 2; *Appendix* 155.

Nor are considerations of "judicial self-governance" that limit standing in some cases present here. Respondents seek to assert their own, individual rights, not those of absent third parties. See *supra*, pp. 14-15, 25. Unlike the claims made in *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974) and other cases relied on by petitioners, respondents are not asserting "generalized" grievances directed against some

governmental agency or policy. Petitioners are *private* real estate firms, and they have not cited a single case against a *private* defendant where this Court has denied standing. The "causal connection" between petitioners' steering practices and respondents' injuries is only a disputed issue in the sense that it is disputed in every other private case where money damages and other appropriate relief are sought; for purposes of satisfying Article III, there can be no dispute after *Trafficante* that this causal connection has been sufficiently alleged here.

Most importantly, respondents' claims are clearly not "generalized," as that term has been used by the Supreme Court in standing cases. Respondents are not challenging a broadly applicable government policy of the sort involved in *Schlesinger*, *Warth*, and *Simon*, *supra*. Rather, their complaints allege that specific realtors are illegally steering homeseekers in a narrow geographic area to the economic and social detriment of the Village of Bellwood and certain individuals whose homes are located in that area. Obviously, this is not a "generalized grievance" shared in substantial measure by all or a large class of citizens." *Warth v. Seldin*, *supra*, 422 U.S., at 499. Respondents' injuries are not shared by homeowners in other Chicago suburbs, such as Winnetka or Oak Brook, or even in neighboring towns like Westchester or Berkeley,²⁰ much less by "every person residing in a large metropolitan area of our society." See *Brief for Petitioners* 51.

Surely, respondents' injuries are "likely to be redressed by a favorable decision." *Simon*, *supra*, 426 U.S., at 38. Once the District Courts determine that petitioners have engaged in racial steering, those courts will have "not merely the power, but the duty to render a decree which [would] so far as possible eliminate the dis-

²⁰ See n. 6, *supra*.

criminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154 (1965); *United States v. West Peachtree Tenth Corporation*, 437 F.2d 221, 228-229 (5th Cir. 1971) (housing discrimination). In particular, the Fair Housing Act explicitly authorizes a court in a § 3612 case to issue "any permanent or temporary injunction, temporary restraining order, or other order" and to "award to the plaintiff actual damages" and other monetary relief. Furthermore, once a federal court determines that § 1982 has been violated, the Supreme Court has held that it has the power to order all necessary and appropriate relief and to "use any available remedy to make good the wrong done." *Sullivan v. Little Hunting Park, Inc.*, *supra*, 396 U.S., at 239.

The lower courts have recognized these long-standing principles of relief in civil rights cases by providing for thorough and effective orders against racial steering. *Zuch v. Hussey*, *supra*, is particularly instructive, because it was one of the first steering cases to reach trial. Practically all of the testimony offered by plaintiffs consisted of the experiences of testers, supplemented by expert witnesses in sociology, psychology, and demographics. These experts put the testers' direct evidence of steering into perspective by pointing out how the population of the relevant area was changing and by explaining the feelings and fears of residents in a racially changing area. 394 F. Supp., at 1031-1034. After a thorough review of the evidence, the court found some thirteen specific violations of the Fair Housing Act (*id.*, at 1052-1053) and entered a comprehensive injunction prohibiting defendants from steering in the future. *Id.*, at 1055-1059. The court in *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*, contemplated similar action when it upheld testers' standing to complain about racial steering in their com-

munity and noted that "a court order enjoining the alleged racial steering would relieve this injury by terminating a major disruptive influence on the racial and financial stability of Wheatley Heights." 429 F.2d, at 489.

Here, respondents seek a similar court order to help stabilize their community and monetary relief for the financial damage petitioners have already done. Since respondents would clearly benefit from the exercise of a federal court's power, they have met the requirements for standing under Article III. See *Warth, supra*, 422 U.S., at 498-499; *Simon, supra*, 426 U.S., at 38-39.

Petitioners argue that Bellwood's "[r]esidential housing patterns are determined by a complex mixture of numerous economic, social and historical factors." *Brief for Petitioners* 49. Respondents agree. But respondents cannot agree that these factors "are beyond the control of these defendants." *Id.*, at 44. By steering white and black homeseekers to different areas, these realtors have taken it upon themselves to control residential housing patterns in Bellwood in a way that Congress has condemned. Neither Congress nor the federal courts, of course, can compel people of different races to live together. But when integrated communities do exist, the homeowners who choose to live in them must be able to use Title VIII and § 1982 to prevent real estate firms from destroying those communities. If Congress cannot say that these respondents have standing to protect their homes and their community, then the federal fair housing laws have "made a promise the Nation cannot keep." See *Jones v. Alfred H. Mayer Co., supra*, 392 U.S., at 443.

CONCLUSION

For the reasons set forth above, the judgment of the Court of Appeals should be affirmed.

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No. 77-1493

Supreme Court, U. S.
FILED

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**In the
Supreme Court of the United States**

OCTOBER TERM, 1978

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On Petition For A Writ of Certiorari To The United States Court
Of Appeals For The Seventh Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

ARGUMENT

I.

PLAINTIFFS HAVE FAILED TO STATE A CLAIM UNDER SECTIONS 3604 AND 3612 OF THE FAIR HOUSING ACT.

In sworn admissions, the individual plaintiffs have stated that they never intended to purchase or rent housing in the Village of Bellwood during the period relevant to this lawsuit. *Appendix* 28, 32, 117, 121. Because the individual plaintiffs had no interest in entering the housing market, they could not have been discriminated against in the purchase or rental of housing. Plaintiffs contend, nonetheless, that they have suffered an injury cognizable under Sections 3604 and 3612 in that their interests have been adversely affected through housing discrimination that was allegedly practiced against absent and unidentified non-parties.¹ The

¹ The *Gladstone* plaintiffs alleged that defendants "undertook efforts to influence the choice of prospective homebuyers on the basis of race, and discouraged prospective black homebuyers from purchasing homes in white areas on the basis of race." *Appendix* 5. Likewise, the *Hintze* plaintiffs alleged that defendants "undertook efforts to influence the choice of prospective black homebuyers from purchasing homes in white areas on the basis of race." *Id.*, 98. Although the individual plaintiffs initially alleged that they had been "denied their right to select housing without regard to race" (*Id.*, 6, 99), they later admitted that they were not "prospective homebuyers" because they never intended to purchase or rent a home in Bellwood during the relevant period. *Id.* 28, 32, 117, 121. The Seventh Circuit properly held that plaintiffs' allegations were foreclosed by these admissions (*Id.*, 153), and plaintiffs did not cross-petition for certiorari. The Lawyers' Committee now argues, however, that the Seventh Circuit erred because the individual plaintiffs might have developed an intention to purchase a home if they had been shown housing which was "sufficiently attractive to them."

(footnote continued)

central question presented herein is whether these plaintiffs—who have admitted that they never intended to enter the housing market—are entitled to maintain an action, under Section 3612, on the strength of their assertion that defendants discriminated against absent and unknown persons who may have been actual homeseekers.²

Even assuming that defendants did engage in racial steering of actual homeseekers, and that plaintiffs did suffer the injuries alleged in their complaints, Sections 3604 and 3612 would not protect the generalized interests which plaintiffs have asserted. Plaintiffs attempt to avoid that fact by asserting that they are within the broad "zone of interests" protected by the Fair Housing Act, but that principle cannot enlarge the explicit statutory right of action contained in Section 3612. Moreover, Sections 3610

(footnote continued)

Brief For Lawyers' Committee 17. In addition to being untimely, the Lawyers' Committee's argument is simply too speculative, and it ignores the uncontroverted fact that the individual plaintiffs were simply testers, who had no interest in purchasing or renting a home. Plaintiffs' claim must stand or fall with their allegations that they have been injured through defendants' alleged discrimination against absent and unknown persons who may have been actual homeseekers. The fragility of plaintiffs' position is underscored by the fact that they would not be qualified to represent these absent and unidentified homeseekers in a class action inasmuch as they could not be considered members of the class they purport to represent. See *Sosna v. Iowa*, 419 U.S. 393, 403 (1975). Moreover, plaintiffs have brought this action under Section 3612, and they cannot avail themselves of the broad standing granted by Section 3610 to any "person aggrieved," which has traditionally been construed to permit persons to assert the rights of others as private attorneys general. See pp. 15-16, *infra*; *Brief For Petitioners* 24-27.

² The Village of Bellwood is not a proper plaintiff herein because it is not a "private person" within the meaning of Section 3612. See *Brief For Petitioners* 17-18 n. 3. The Court of Appeals considered and rejected defendants' argument on this issue, which is part of the question presented for review and properly before the Court.

and 3612 do not grant rights of action to identical classes of potential litigants and, therefore, it does not follow that potential plaintiffs must be entitled to sue under Section 3612 simply because their alleged injuries might permit them to bring suit as "persons aggrieved" under Section 3610. Finally, the creation of a right of action in these plaintiffs is not warranted by either the legislative history of the Fair Housing Act or this Court's decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972).

A. Whether Plaintiffs Are Within The "Zone Of Interests" Protected By The Fair Housing Act Is Irrelevant To The Question Whether They Have A Right Of Action Under Sections 3604 And 3612.

Relying on *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970), plaintiffs argue at length that their claims are cognizable under Section 3612 because the injury they allege is within the "zone of interests" protected by the Fair Housing Act. *Brief For Respondents* 17-25. The Court's decision in *Data Processing* is inapposite, however, because it considered the question of standing to secure judicial review of administrative action in circumstances where the relevant statute did not explicitly provide a right of action to anyone. In those circumstances, the Court held only that the plaintiffs' allegations of competitive injury, which allegedly resulted from a ruling of the Comptroller of the Currency, were sufficient to invest them with standing as "persons aggrieved" under the Administrative Procedure Act.³

³The Administrative Procedure Act permits administrative review actions to be brought by any "person aggrieved." 5 U.S.C. § 702. As the Court noted in *Data Processing*, a wide range of interests is encompassed by that language, which demonstrates a very broad grant of standing. See *Data Processing, supra*. 153-4.

By contrast, the presence of specific enforcement provisions in the Fair Housing Act precludes the use of a zone of interests analysis. Whether a particular claim falls within the protection of the Act must be determined by reference to those specific provisions. It proves too much to assert that the interests of the plaintiffs herein must fall within the zone of interests relevant to the Fair Housing Act simply because Congress acted to provide "for fair housing throughout the United States." 42 U.S.C. § 3601. The mere inclusion of a general statement of intention cannot create an actionable claim in circumstances which are not countenanced by the specific enforcement provisions contained in the Act. See *Bissette v. Colonial Mortgage Corp.*, 477 F.2d 1245, 1246 n.2 (D.C. Cir. 1973). Plaintiffs' reliance on this preamble is misplaced because its inclusion would have been equally appropriate if Congress had limited enforcement of the Fair Housing Act to suits brought by the Attorney General. In that event, it would certainly be absurd to suggest that any member of the public—even a direct victim of a discriminatory housing practice—could bring a private action simply because he alleged that his interest fell within the statutory zone of interests suggested by this preamble. Although the Fair Housing Act's enforcement procedures are in fact more complex than that suggested in this hypothetical, plaintiffs' assertion that a zone of interests analysis should displace a specific statutory remedial scheme is no more persuasive in this case.⁴

⁴ Plaintiffs' reliance on a zone of interests analysis is similar to a claim of an implied right of action. Given the tripartite remedial scheme of the Fair Housing Act, however, any expansion of the Act's coverage through an implied right of action analysis would be

(footnote continued)

B. Sections 3610 And 3612 Are Not Merely Alternative Enforcement Provisions.

The Seventh Circuit erroneously held that Sections 3610 and 3612 provide wholly alternative enforcement procedures available to identical classes of plaintiffs, at their election, in all circumstances. In reaching that conclusion the Court of Appeals failed to consider the substantive differences between the two sections, and it did not evaluate "the role played by [Section 3612] within 'the context of the entire legislative scheme.'" *Morris v. Gressette*, 432 U.S. 491, 501 (1977), quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 141 (1967).⁵

The most obvious difference between the two sections is their respective procedural schemes. See *Brief For Petitioners* 19-21. In Section 3610, Congress provided an exhaustion requirement to permit HUD, as well as specialized

(footnote continued)

precluded by the principle of *expressio unius est exclusio alterius*. *National R.R. Passenger Corp. v. National Association of R.R. Passengers*, 414 U.S. 453, 458 (1974). Moreover, the other remedies provided by the Fair Housing Act, which are available to these plaintiffs, would make the implication of a right of action unnecessary to the achievement of the Act's purposes. Compare *Allen v. State Board of Elections*, 393 U.S. 544 (1969).

⁵ Under Section 5 of the Voting Rights Act of 1965, the Attorney General may object to changes in a state's voting laws. 42 U.S.C. § 1973c. Traditionally, the right to vote has been afforded special protection by the federal courts. See *Wayne v. Venable*, 260 Fed. 64, 66 (8th Cir. 1919). In *Morris*, *supra*, the Attorney General failed to object to a change in South Carolina's voting laws, and certain affected citizens sought review of that action under the Administrative Procedure Act. Despite the strong presumption in favor of judicial review of administrative action, and the important character of the rights which plaintiffs sought to secure for themselves, the Court held that the Attorney General's action was not reviewable.

state and local agencies, to utilize their expertise in resolving housing disputes. The Seventh Circuit's decision authorizes circumvention of this procedure by all potential plaintiffs in all cases, and the two reasons which plaintiffs put forward to support that decision are equally infirm.

First, plaintiffs argue that it would be "ridiculous" for Congress to require any class of plaintiffs to avail themselves of HUD conciliation mechanisms, as a condition precedent to filing a lawsuit, because HUD has no coercive powers of enforcement. *Brief For Respondents* 39. Plaintiffs' analysis is faulty, however, because the non-coercive nature of HUD's remedy only serves to underscore essential differences between Sections 3610 and 3612. The HUD remedy contained in Section 3610 is concededly less adversary than the Section 3612 judicial remedy, and it is less costly for both plaintiffs and defendants.⁶ On the other hand, the relief available under Section 3610 may be less timely than that which might be granted by a federal injunction. As plaintiffs correctly note, "§ 3612 is vitally important in cases where time is of the essence." *Brief For Respondents* 37. Accord *TOPIC v. Circle Realty*, 532 F.2d 1273, 1276 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976). Nonetheless, plaintiffs fail to perceive the importance of their observation. Generally, a direct victim of discrimination will need immediate relief to establish his right to particular housing before it is sold or rented to someone else. By contrast, there is no analogous need

⁶ HUD conciliation procedures are flexibly designed to make legal representation unnecessary. For instance, a party need not be concerned that statements made by him in the context of conciliation proceedings will be used in subsequent litigation. See 42 U.S.C. §3610(a).

for alacrity in cases, such as this one, that are brought by persons who are not direct victims of alleged discrimination. Cases involving broad allegations by persons who are not direct victims of discrimination present the ideal circumstances for initial resort to administrative conciliation procedures, rather than coercive federal judicial remedies that are costly for society as well as for the parties. Moreover, conciliation may well lead to early termination of a controversy, with minimal costs, because HUD may successfully convince a putative defendant that settlement is indicated or, in other circumstances, it may convince the complaining party that his legal rights have not been violated.⁷

Because Section 3610 also defers to state and local fair housing laws creating rights and remedies substantially equivalent to those contained in the Fair Housing Act,⁸

⁷ Significantly, HUD is empowered to investigate complaints of housing discrimination, and to inform the Attorney General concerning the results of its investigation. 42 U.S.C. §§ 3610(a), 3611; 24 C.F.R. § 105.36. If HUD's investigation discloses evidence of a pattern or practice of discrimination, the Attorney General may bring an action under 42 U.S.C. § 3613. See *Hearings on H.R. 14765 Before the House Comm. on the Judiciary*, 89th Cong., 2d Sess. 1392-93 (1966) (remarks of HUD Secretary Weaver and HUD General Counsel Foard). Plaintiffs have alleged just such a pattern or practice of discrimination. See *id.*, 1209 (remarks of Attorney General Katzenbach).

⁸ With remarkable ingenuousness, plaintiffs deprecate the remedies provided by the ordinance in effect in Bellwood. See *Brief For Respondents* 41. While defendants disagree with plaintiffs' construction of that ordinance, the Village is certainly free to enact a more stringent ordinance if it chooses to do so. It is indeed strange for the Village to be arguing that it needs the protection of the federal

(footnote continued)

the noncoercive nature of HUD conciliation procedures is irrelevant wherever such state or local laws have been enacted. 42 U.S.C. § 3610(e). Finally, plaintiffs' persistent denigration of Section 3610 remedies ignores the fact that these remedies do not preclude federal judicial relief; they simply postpone the availability of that relief. As the Chief Justice has said in another context, "Exhaustion is simply one aspect of allocation of overtaxed judicial resources." *Moore v. City of East Cleveland*, 431 U.S. 494, 524 (1977) (Burger, C.J., dissenting). In short, Congress's failure to grant coercive enforcement authority to HUD does not weaken the policy considerations underlying the detailed remedial structure embodied in Section 3610. See *Brief For Petitioners* 20-21, 26-27.

Second, plaintiffs contend that Congress had no intention of deferring to state and local remedies in the enforcement of the Fair Housing Act. *Brief For Respondents* 39-41. That contention is wholly inconsistent with the requirement, contained in Section 3610, that remedies provided by state and local fair housing laws must be exhausted if they are substantially equivalent to those con-

(footnote continued)

courts because it is dissatisfied with its own ordinance. Moreover, the efficacy of the Bellwood ordinance is irrelevant to defendants' principal argument: that Congress wished to encourage the enactment and enforcement of state and local fair housing laws creating rights and remedies substantially similar to those provided by the Fair Housing Act. See pp. 10-11 n. 10, *infra*. That purpose, rather than the specific ordinance involved in this case, must inform the Court's construction of Section 3612.

tained in the Fair Housing Act, 42 U.S.C. § 3610.⁹ See *Brief For Petitioners* 20. Plaintiffs' argument—that Congress recognized that state and local governments could not be trusted—is flatly contradicted by the unambiguous provisions of Section 3610, as well as by its relevant legislative history.¹⁰ Moreover, plaintiffs' argument proves noth-

⁹ Plaintiffs incorrectly characterize defendant's position on this issue. Defendants have never suggested that exhaustion of state and local remedies is a prerequisite to the filing of a Section 3612 suit. See *Brief For Respondents* 39. Rather, defendants have argued that the explicit deference to effective state and local remedies required by Section 3610 reflects a strong Congressional policy encouraging the development and utilization of such remedies. *Brief For Petitioners* 20-21. The Seventh Circuit's expansive interpretation of Section 3612 allows systematic circumvention of the Section 3610 remedial structure, thereby frustrating this underlying policy.

¹⁰ The provisions relating to state and local remedies originated in an amendment offered by Senator Miller. The following colloquy, between Senator Miller and Senator Hart, is particularly instructive with respect to the purpose of these provisions:

[MR. MILLER.] It seems to me that if a State or local fair housing law provides substantially equivalent rights and remedies, if we are going to let the local agencies of government carry out their responsibilities, they should be given the opportunity to do so. That is why the first part of my amendment provides that if the appropriate State or local enforcement official has, within 30 days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, failed to carry forward such proceedings with reasonable promptness, then and only then can the Secretary enter the matter.

* * * * *

I wish to repeat that, if we are dealing with a State or local fair housing law which provides equivalent remedies, why do we not require the one who has allegedly been discriminated against

(footnote continued)

ing but that plaintiffs do not agree with the policy judgments already made by Congress. Plaintiffs' bald assertion that local governments played a substantial part in creating and maintaining housing discrimination need only be compared to Senator Mondale's criticism of "the policies and practices of agencies of government at *all levels*" to demonstrate the superficiality of plaintiffs' argument. See 114 Cong. Rec. 2277 (1968), quoting U.S. Comm. on Civil Rights, Annual Report 60 (1967) (emphasis added).

The materially divergent language used in Sections 3610 and 3612, to identify the different classes of persons

(footnote continued)

to go through the remedies so provided?

That is why I provide in the second part of my amendment that no civil action may be brought in any U.S. district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides substantially equivalent rights and remedies to this act.

I believe it is a matter of letting the State and local courts have jurisdiction. We in the Senate know that our Federal district court calendars are crowded enough, without adding to that load if there is a good remedy under State law.

Mr. President, that is what the amendment is all about. I have discussed it at some length with the manager of the bill and I understand it is acceptable to him.

MR. HART. Mr. President, the Senator from Iowa, in making this suggestion, may very well have improved the bill. It certainly recognizes the desire all of us share that the State remedies, where adequate, be availed of and that unnecessary burdening litigation not further clog the court calendars.

The Senator from Iowa in developing this approach has made the bill much more acceptable. The senior Senator from Illinois [Mr. Dirksen], whose substitute we are actually discussing, shares this opinion.

I support the request of the Senator from Iowa that we agree to the amendment.

114 Cong. Rec. 4987 (1968)

entitled to relief thereunder, also underscores the substantive differences between the two sections. While Section 3610 promises relief to any "person aggrieved," Section 3612 provides merely that certain enumerated rights "may be enforced by civil actions." The importance of this distinction is well demonstrated by plaintiffs' posture in this case. As plaintiffs have emphasized, the gist of their complaint is that defendants have allegedly steered actual but unknown homeseekers. See *Brief For Respondents* 13. Assuming *arguendo* that defendants have engaged in that conduct, that defendants' conduct violates the Fair Housing Act, and that these plaintiffs have been injured because of that conduct,¹¹ it may be that the individual plaintiffs¹² would qualify as "persons aggrieved" within the meaning of Section 3610. It does not follow, however, that they are entitled to sue under Section 3612.

Unlike Section 3610, Section 3612 speaks of "rights" rather than of "injury." The notion of "injury" is more comprehensive than the concept of "rights" in that a person may be injured by unlawful conduct even when his legal rights have not been violated. For instance, a person may have been injured in fact by an illegal search, but he will not be entitled to have evidence suppressed unless his legal rights were also violated. See *Brief For Petitioners* 27-28.

¹¹ Plaintiffs' alleged injury is insufficient, however, to establish a justiciable controversy under Article III. *Brief For Petitioners* 39-52. See pp. 28-29, *infra*.

¹² If the Village of Bellwood is not a "person" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(d), it cannot be a "person aggrieved" under Section 3610. See *Brief For Petitioners* 17-18 n. 3. Certainly, the Village of Bellwood is not a "private person" within the protection of Section 3612. *Id.*

The Court has previously held that an action under Section 3612 "sounds basically in tort" [*Curtis v. Loether*, 415 U.S. 189, 195 (1974)], and it is well established that "an action for damages resulting from a tort can only be sustained by the person directly injured thereby, and not by one claiming to have suffered collateral or resulting injuries." *Loucks v. Albuquerque National Bank*, 418 P.2d 191, 199 (N. Mex. 1966). Accord *Ware v. Brown*, 29 Fed. Cas. 220 (S.D. Ohio 1869).¹³ There is nothing in Section 3612, or in the legislative history of that section, to suggest that Congress intended to depart from this principle. Indeed, the extension by Congress of a right of action under

¹³ Similarly, a person may not sue for breach of contract merely because he has been injured by the breach; he must also demonstrate that he was a party, or a third-party beneficiary, to the contract. A party who is only an incidental beneficiary may not maintain an action for breach because his "relation to the contracting parties is such that the courts will not recognize any legal right in him." 4 A. Corbin, *Contracts* § 779C (1951). In *Isbrandtsen v. Local 1291*, 204 F.2d 495 (3rd Cir. 1953), the court applied this principle in construing a federal statute strikingly similar to Section 3612. *Isbrandtsen* had chartered a vessel to Scott who, in turn, hired Lavino to unload its cargo. During the unloading, Lavino's employees struck in violation of their collective bargaining agreement. *Isbrandtsen* brought suit against the union, under 29 U.S.C. § 185(a), alleging that it had been injured through the delay caused by the illegal strike. In relevant part, Section 185(a) provides that, "Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties." 29 U.S.C. § 185(a). Because Section 185(a) does not define the class of persons who are thereby entitled to sue, the court was required to determine whether a third-party such as *Isbrandtsen* should be "included as one who may sue for damages suffered by breach of this contract." *Isbrandtsen, supra*, 496. The court held that the statute did not provide a remedy to persons who were not parties to a collective bargaining agreement. *Id.*, 498.

Section 3610 to any person claiming injury—and its failure to employ the same expansive language in Section 3612—strongly suggest that Congress intended to adhere to traditional principles in Section 3612 cases.¹⁴

Plaintiffs assert repeatedly that they brought “*their*” action to protect “*their* right to maintain their present homes without regard to illegal racial considerations.” *Brief For*

¹⁴ By interpreting Sections 3610 and 3612 as co-extensive, the Seventh Circuit has invested putative plaintiffs with the power to decide whether legislative commitments to conciliation rather than litigation, and to the development of and deference to effective state and local remedies, should be furthered. The Seventh Circuit’s decision has thereby encouraged emasculation of one part of the tripartite remedial scheme that was carefully designed to further those goals. The Fair Housing Act was “born of compromise,” and it is necessary “to respect the limits up to which Congress was prepared to enact a particular policy, especially when [as here] the boundaries of a statute are drawn as a compromise resulting from the countervailing pressures of other policies.” *United States v. Sisson*, 399 U.S. 267, 298 (1970). To permit these plaintiffs to abrogate systematically the policies underlying Section 3610, by suing immediately under Section 3612, is contrary to the principle that “[o]ne portion of a statute should not be construed to annul or destroy what has been clearly granted by another.” *Peck v. Jenness*, 48 U.S. (7 How.) 612, 623 (1849). “[T]he construction should be such that both provisions, if possible, may stand.” *United States v. Moore*, 95 U.S. 760, 763 (1877). The Seventh Circuit acknowledged that its decision “may to some degree seem to offend a judicial penchant for consistency.” *Appendix* 162. The inconsistency acknowledged by the Seventh Circuit would be avoided, however, by giving a reasonable interpretation to each of the sections. If Section 3610 is liberally construed, consistent with its use of the “person aggrieved” standard, and if Section 3612 is construed consistently with its customary usage, to permit a tort action to be brought only by the person directly injured, the inconsistency will necessarily be avoided. See *Lamp Chimney Co. v. Brass & Copper Co.*, 91 U.S. 656, 663 (1875).

Respondents 15 (emphasis in original). In this way, they attempt to transform the injury which they have allegedly suffered into a violation of rights protected by the statute.¹⁵ One looks in vain, nonetheless, to find this “right” among those enumerated in Section 3604. Because plaintiffs cannot demonstrate a violation of rights guaranteed by Section 3604, and because the injuries they claim to have received are collateral to the alleged wrongful conduct, they have not stated a claim under Section 3612.

In contrast to Section 3612, Section 3610 applies to any “person aggrieved,” expansively defined as “[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur.” 42 U.S.C. §3610(a). This section must be construed in light of the fact that the phrase “person aggrieved” is a term of art, which has been used historically to create an expansive right of access to the courts. See *Brief For Petitioners* 19-24.¹⁶ As the Court has previously

¹⁵ This “right-injury” distinction was immaterial in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), because the plaintiffs therein brought suit under Section 3610. They alleged that they had been injured by being deprived of the benefits of living in an integrated apartment complex and they qualified, therefore, as “persons aggrieved” under the more comprehensive provisions of Section 3610. The Court did not have to decide whether the “right” to live in an integrated community is a right granted by Section 3604.

¹⁶ In *E.E.O.C. v. Bailey*, 563 F.2d 439, 452 (6th Cir. 1977), *cert. denied*, 435 U.S. 915 (1978), the court held that the inclusion of this phrase in Title VII demonstrated an intention to permit suits to be brought by persons “who may have suffered from the loss of benefits from the lack of association with racial minorities at work.” The court emphasized that it would not have

(footnote continued)

noted, "It is a well-settled rule of construction that language used in a statute which has a settled and well-known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the legislative body." *Kepner v. United States*, 195 U.S. 100, 124 (1904). Accord *The "Abbotsford,"* 98 U.S. 440, 444 (1878).

Plaintiffs herein have simply ignored the Court's holding in *Trafficante* that the phrase "person aggrieved" demonstrates "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Trafficante*, 409 U.S. at 209, quoting *Hackett v. McGuire Brothers, Inc.*, 445 F.2d 442, 446 (3rd Cir. 1971). Instead, plaintiffs rely on a statement made by Representative Cramer in 1966, during hearings on an earlier and unsuccessful housing bill which he opposed, for the dubious proposition that Congress actually intended to limit standing, two years later, by including "person aggrieved" in Section 3610. See *Brief For Respondents* 30. Plaintiffs' reliance on that statement is simply misplaced.

(footnote continued)

reached this conclusion but for Congress's inclusion of the "person aggrieved" standard in that statute. *Id.* The Sixth Circuit's decision in *Bailey* followed the Ninth Circuit's decision in *Waters v. Heublein, Inc.*, 547 F.2d 466 (9th Cir. 1976), *cert. denied*, 433 U.S. 915 (1977), in which the court held that a white woman, who claimed to have been injured because her employer discriminated against others on racial grounds, was "a person claiming to be aggrieved" within the meaning of Title VII. Although the membership of the *Waters* panel contained one judge who had participated in the court's prior decision in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), the later panel found no need to distinguish the earlier decision. When considered together, the Ninth Circuit's decisions in *Waters* and *TOPIC* strongly support defendants' construction of Sections 3610 and 3612.

Representative Cramer's statement was addressed to a predecessor bill that was substantially unlike the bill that was finally enacted, and it was made in the course of hearings¹⁷ that took place two years before the passage of the Fair Housing Act. The congressman's statement also reflects a fundamental misunderstanding of both the customary meaning of "person aggrieved" and constitutional standing requirements. The major difficulty with plaintiffs' reliance on the Cramer statement, however, is that it fails to account for Section 3612 as part of an integrated and coherent statute. See *Brief For Petitioners* 19-29. The bill that Representative Cramer addressed in 1966 was materially different from the bill that was enacted in 1968 in that the earlier bill "provided for enforcement only by an action in a United States District Court or in an appropriate state court." *Brief For The United States* 23-24.

¹⁷ The total absence of committee reports, which are the most reliable source of legislative history, strongly supports the Court's observation that, "The legislative history of the Act is not too helpful." *Trafficante, supra*, 210. A committee report is persuasive evidence of legislative intent because it "represents the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." *Zuber v. Allen*, 396 U.S. 168, 186 (1969). Congressional debates are generally considered to be less reliable. *United States v. U.A.W.*, 352 U.S. 567, 585 (1957). They are particularly unreliable when they reflect merely the views of individual members. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 474 (1921). The isolated statement of Representative Cramer is entitled to little weight because it related to an earlier bill, and it was made in Committee, rather than in the House itself. "[S]uch individual expressions are without weight in the interpretation of a statute." *McCaughn v. Hershey Chocolate Co.*, 283 U.S. 488, 494 (1931). Statements of individual members are especially suspect when, as here, the individual member is an opponent of the legislation under consideration. "An unsuccessful minority cannot put words into the mouths of the majority and thus, indirectly, amend a bill." *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 288 (1956) (footnote omitted).

In other words, the Cramer statement is not helpful in understanding the proper relationship of Sections 3610 and 3612—which is the central question presented herein—because the bill that was the subject of that statement had no provision that was analogous to Section 3610. Representative Cramer's statement lacks authority because the context in which it was made has been superseded.

C. Plaintiffs' Argument That They Were Direct Victims Of Discrimination, With Rights Cognizable Under Sections 3604 and 3612, Is Untimely And Unpersuasive.

The individual plaintiffs have alleged that defendants "denied [them] their right to select housing without regard to race." *Appendix 6*, 99. In formal admissions, however, plaintiffs stated that they never intended to purchase or rent homes in Bellwood during the relevant time period. *Id.*, 28, 32, 117, 121. Because of those admissions, the Seventh Circuit held that the district court had properly dismissed those claims. *Id.*, 153. Plaintiffs did not cross-petition for certiorari to bring that portion of the Seventh Circuit's holding before this Court, and it is not part of the question on which certiorari was granted. In their answering brief, nonetheless, plaintiffs seem to argue that they were direct victims of discrimination within the scope of Section 3604. *Brief For Respondents 27-28*.¹⁸ The Lawyers' Committee argues that point

¹⁸ Plaintiffs also argue that defendants' failure to respond to their discovery requests precluded them from uncovering possible examples of racial steering against actual homeseekers. See *Brief For Respondents 14 n. 7*. Had they felt it necessary, plaintiffs could have moved the district court to compel responses to their discovery requests, and they could have sought a continuance to obtain affidavits or discovery to oppose defendants' motions for summary judgment. Fed.R.Civ.P. 37(a)(2), 56(f). Because they chose not to do so, their present argument sounds hollow.

more explicitly. See *Brief For Lawyers' Committee 11-18*. These arguments are not properly before the Court because a respondent must cross-petition for certiorari if he is dissatisfied with any portion of the judgment below. *Strunk v. United States*, 412 U.S. 434, 437 (1973); *Brennan v. Arnheim & Neely, Inc.*, 410 U.S. 512, 516 (1973); *N.L.R.B. v. International Van Lines*, 409 U.S. 48, 52 n.4 (1972); *Alaska Industrial Board v. Chugach Electric Association*, 356 U.S. 320, 325 (1958). Because these arguments are beyond the scope of the question presented, they should not be considered by this Court. Cf. *Irvine v. California*, 347 U.S. 128, 129 (1954).

Even if plaintiffs' arguments were properly before the Court, which they are not, those arguments would not be persuasive on the merits because Section 3604 grants rights actionable under Section 3612 only to persons who are prospective purchasers or renters of housing. The first clause of Section 3604(a) explicitly limits the coverage of that subsection to circumstances in which a bona fide offer has been made. The bona fide offer requirement reflects Congress's intention to minimize harassment and abuse in the enforcement of the Fair Housing Act. See *Brief For Petitioners 31-34*. The title of Section 3604—"Discrimination in Sale or Rental of Housing"—also shows that Congress intended to limit to actual homeseekers the protection afforded by Section 3604. See *United States v. Fisher*, 6 U.S. (2 Cranch) 358, 359 (1805) (Marshall, C.J.).

For their part, plaintiffs emphasize the absence of any "bona fide offer" language in the remaining provisions of Section 3604, from which they infer that the protection of those provisions is not limited to persons who are actually interested in purchasing or renting a home. Plaintiffs'

inference is unsound, however, because it fails to recognize that the existence of a "bona fide offer" is logically relevant only to sale and rental situations, and not to the other activities that are covered by Section 3604. Clearly, it would not make sense to require the existence of a bona fide offer—or any offer—as a precondition for bringing a lawsuit to challenge discrimination occurring at the time of advertisement, negotiation, or inspection of housing. However, it would make equally little sense to permit someone who has no intention of purchasing or renting a home to shop for lawsuits by reading the classified advertisements in the daily newspaper. See *Hailes v. United Airlines*, 464 F.2d 1006, 1008 (5th Cir. 1972). In other words, even at the time of advertising, negotiation or inspection, a good faith interest in purchasing or renting a home is necessary to establish a violation of Section 3604. If the Lawyers' Committee is correct in its assertion that the Fair Housing Act creates a right of "nondiscriminatory access to the housing market" (*Brief For Lawyers' Committee* 15), the exercise of that right necessarily requires an intention to enter the housing market. Because plaintiffs herein lacked that intention, they could not have been discriminated against in the sale or rental of housing.¹⁹

¹⁹ Previous decisions of this Court, permitting suits to be brought by persons motivated by a desire to institute litigation, are readily distinguishable from this case. In *Evers v. Dwyer*, 358 U.S. 202 (1958), the Court held that the plaintiff did not have to be arrested to establish an "actual controversy" within the meaning of the Declaratory Judgment Act. In *Pierson v. Ray*, 386 U.S. 547 (1967), the Court held simply that the plaintiffs' expectation of an illegal arrest did not constitute consent to that arrest. Neither case involved circumstances or a question of substantive law remotely similar to those presented herein.

Finally, the Lawyers' Committee suggests that the requirement of a good faith interest in entering the housing market will prove unworkable. *Brief For Lawyers' Committee* 17-18.²⁰ This argument is unpersuasive because courts must frequently determine issues of intent. See *Wood v. Strickland*, 420 U.S. 308 (1975). That some cases may present close factual questions is no justification for despairing of that inquiry. Moreover, whatever difficulties of proof may be encountered in other circumstances, no such uncertainty is present in this case because plaintiffs have unequivocally admitted that they did not intend to purchase or rent housing.²¹

²⁰ The Lawyers' Committee asserts that plaintiffs' "only admission was that they did not intend to make bona fide offers to purchase." *Brief For Lawyers' Committee* 8 n.6. This assertion is incorrect because plaintiffs admitted that they had no intention whatsoever of purchasing or renting a home. *Appendix* 28, 32, 117, 121. The Lawyers' Committee further characterizes the good faith intention requirement as having "little relationship to the purposes of the Act." *Brief For Lawyers' Committee* 17. This statement, of course, is inconsistent with the legislative policy exemplified in the Allott Amendment. See *Brief For Petitioners* 31-34. The Lawyers' Committee further asserts that defendants' discovery in this case "focused on the individual respondents' motivations rather than on the issue of discrimination." *Brief For Lawyers' Committee* 17. That statement is erroneous. In each of defendants' discovery requests, only one request for admission focused on plaintiffs' intentions; the remainder of the interrogatories, requests to produce, and requests for admissions concerned the question of actual discrimination. *Appendix* 14-22, 105-113.

²¹ Moreover, it must be assumed that most defendants will propound questions to plaintiffs concerning their intentions, and that plaintiffs will truthfully answer such questions when required to do so under oath. The Lawyers' Committee's position is incomprehensible, however, unless one assumes the contrary.

D. The Legislative History Of The Fair Housing Act Does Not Support The Seventh Circuit's Decision.

The Seventh Circuit erred in relying upon the Fair Housing Act's legislative history to support its construction of Section 3612. *Appendix* 161-62. In this Court, plaintiffs' legislative history argument is essentially two-pronged. First, plaintiffs cite a House staff memorandum which described Section 3612 as "apparently an alternative to the conciliation-then-litigation approach." 114 Cong. Rec. 9612 (1968).²² See *Brief For Respondents* 34. Defendants have previously noted that this characterization is only partially correct: Sections 3610 and 3612 are indeed alternatives for persons who have actually been subjected to discrimination in the purchase or rental of housing. Because the legislative history of the Act contains no indication at all that Congress ever considered the possibility that suits might be brought by persons who were not prospective purchasers or renters, however, the statement made in the House staff memorandum has little probative value in the present context. See *Brief For Petitioners* 29-30.

Plaintiffs' second legislative history argument is more general but equally unpersuasive. Plaintiffs assert that the legislative history contains nothing to suggest "that standing under § 3612 was designed to be narrower than standing under § 3610." *Brief For Respondents* 29. Plain-

²² Plaintiffs' quotation from the House staff memorandum is questionable in that it omits the qualifying adverb "apparently." See *Brief For Respondents* 34. The memorandum itself is also suspect because it was prepared for the purpose of opposing the proposed legislation. Representative Ford inserted it in the Congressional Record to help convince his colleagues that the bill ought not to be hastily adopted after the murder of Dr. Martin Luther King. See 114 Cong. Rec. 9609 (1968). Consequently, the statement quoted by plaintiffs is entitled to little weight in the interpretation of Section 3612. See *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 288 (1956).

tiffs conclude, therefore, that the class of potential plaintiffs under Section 3612 is at least as inclusive as that under Section 3610. This conclusion is unwarranted. Because Congress never considered the possibility that suits might be brought by persons other than direct victims of discrimination, Congress's failure to distinguish, in terms, between the classes protected by Sections 3610 and 3612 does not give weight to the Seventh Circuit's decision.

According to Senator Mondale, "the basic purpose" of the Fair Housing Act was "to permit people who have the ability to do so to buy any house offered to the public if they can afford to buy it." 114 Cong. Rec. 3421 (1968). Cf. *id.* 2277-78, 5514-15. Although the entire society suffers from the effects of discrimination in some sense, the legislative history of the Fair Housing Act contains no indication that Congress intended that persons other than those discriminated against should be allowed to bring suit to enforce the Act. Given this silence, Section 3612 "should be construed to fit, so far as will comport with its words, into the entire statutory system . . . to make a workable, consistent and equitable whole." *Feres v. United States*, 340 U.S. 135, 139 (1950).²³ The individual plaintiffs

²³ In *Feres, supra*, the Court held that the Federal Tort Claims Act did not afford a remedy to persons in the military service who had been injured by the negligence of other active duty military personnel. As here, the legislative history demonstrates that Congress had not considered the possibility that such claims might be made. The Court said:

There are few guiding materials for our task of statutory construction. No committee reports or floor debates disclose what effect the statute was designed to have on the problem before us, or that it even was in mind. Under these circumstances, no conclusion can be above challenge, but if we misinterpret the Act, at least Congress possesses a ready remedy.

Id., 138.

rest their claim of injury upon discrimination that was allegedly practiced against absent and unidentified third-parties, who may have been direct victims of discrimination. If these plaintiffs wish to vindicate the rights of those third-parties, they must do so under Section 3610. Neither the legislative history nor the language of the Fair Housing Act supports plaintiffs' right to sue under Section 3612.²⁴

E. This Court's Decision In *Trafficante* Does Not Control This Case.

In *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), the Court held that residents of an apartment complex were entitled to sue as "persons aggrieved," under Section 3610 of the Fair Housing Act, because they alleged that they had been injured through defendants' interference with their interests in living in an integrated housing complex. Because the Court's holding in *Trafficante* was based on the broad "person aggrieved" language of Section 3610, rather than the narrower language of Section 3612, that decision does not control the present case.

Although the *Trafficante* plaintiffs initially brought their action under both Section 3610 and Section 3612, the latter played no part in this Court's decision. In *Trafficante*,

²⁴ As further support for the Seventh Circuit's decision, plaintiffs rely on that portion of the legislative history dealing with administrative remedies. *Brief For Respondents* 31-33. From a brief summary of the policies underlying the adoption of the administrative remedies provision, plaintiffs conclude that "Congress intended . . . that there would be no distinction between who might bring an action under the administrative procedure as compared to the judicial procedure." *Id.*, 32. That conclusion, defendants submit, is completely unwarranted because the statements of Representative Conyers, which plaintiffs quote in support of their conclusion, do not even address the issue. Here, as elsewhere, plaintiffs attempt to infer far too much from the silence of legislative history.

the Court noted that Section 3610 was "[t]he key section now before us." *Id.*, 210. Moreover, the Court rested its holding only on Section 3610, specifically noting that it was "leaving untouched all other questions." *Id.*, 212. There is simply no suggestion in *Trafficante* that the Court intended to endorse the Section 3612 claims of the plaintiffs therein, and that decision does not, in any way, depend on the recognition of those claims. Indeed, the Court could not have been more explicit in disavowing Section 3612 as a basis for its holding.²⁵ That *Trafficante* should be narrowly construed is also demonstrated by the concurring opinion of three Justices, which addressed only Section 3610—that provision "purporting to give all those who are authorized to complain to the agency the right also to sue in court"—and concluded that that provision should be sustained "insofar as it extends standing to those in the position of the petitioners in this case." *Id.*, 212 (White, J., concurring).

The Court's decision in *Trafficante* does not control this case because it did not decide whether Section 3612 grants any right of action to persons who are not direct victims of discrimination.²⁶ Moreover, the Seventh Circuit erred

²⁵ Even if the Court had been silent with respect to the Section 3612 claim, however, that silence would not support the position of the plaintiffs herein because an argument based on the Court's silence, with respect to an issue that is not essential to its holding, is inherently suspect. Even *sub silentio* treatment of an essential issue lacks the full weight of *stare decisis*. *Edelman v. Jordan*, 415 U.S. 651, 671 (1974). Cf. *Mandel v. Bradley*, 432 U.S. 173, 176 (1977).

²⁶ That the Court rested its decision on Section 3610, rather than on Section 3612, also supports defendants' position that Section 3610 grants a right of action to a broader class of plaintiffs than does Section 3612.

in holding that the decision it reached was required by the "thrust and rationale" of *Trafficante*. Appendix 160. The position taken by the Seventh Circuit is not necessary to guarantee that "complaints by private persons [will continue to be] the primary method of obtaining compliance with the Act." *Trafficante*, *supra*, 209. More significantly, given "the enormity of the task of assuring fair housing" (*id.*, 211), it is imperative that this Court construe Section 3612 consistently with the development and utilization of effective fair housing laws at all levels of government, as Congress intended when it enacted the Fair Housing Act. The Seventh Circuit's construction of Section 3612 undermines this important objective, and it is also unsupported by the language and legislative history of the Act.

II.

PLAINTIFFS HAVE FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED UNDER SECTION 1982.

Neither the individual plaintiffs nor the Village of Bellwood has stated a claim under Section 1982 because that section grants no right of action to plaintiffs who allege only "that they have been harmed indirectly by the exclusion of others." *Warth v. Seldin*, 422 U.S. 490, 514 (1975). Plaintiffs' contrary assertion is unsupported by any authority, and their reliance on *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976), is misplaced. See *Brief For Respondents* 46. In *McDonald*, two white employees alleged that they had been subjected to racial discrimination because their employment was terminated when they were accused of theft, while a black fellow employee who was similarly accused was not discharged. The

Court held that the *McDonald* plaintiffs had stated a claim under Section 1981 because, unlike the plaintiffs herein, they were direct victims of racial discrimination. Consequently, the *McDonald* decision is not helpful in the present case. Plaintiffs' discussion of *Tillman v. Wheaton-Haven Recreation Association*, 410 U.S. 431 (1973), is also inapposite because the plaintiffs therein were also direct victims of racial discrimination, whose rights to purchase and hold real estate were violated.²⁷

In effect, plaintiffs seek to have the provisions of Section 1982 declared co-extensive with those of the Fair Housing Act. The Court has previously held, however, that Section 1982 is narrower in its scope. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413-14 (1968). Likewise, in *Hunter v. Erickson*, 393 U.S. 385, 388 (1969), the Court held that Section 1982 must be construed in light of the "far more detailed" provisions of the Fair Housing Act. It is obvious, therefore, that the provisions of Section 1982 and the Fair Housing Act are not co-extensive.

Plaintiffs allege that they were injured by defendants' discrimination against absent and unidentified third par-

²⁷ In *Tillman*, *supra*, the value of the plaintiffs' property was diminished when they were denied membership rights, in a community swimming pool association, because of their race. If the *Tillman* plaintiffs had not been black, they would not have been denied membership in that association, and they would not have suffered any injury. The present case is not analogous because the plaintiffs herein allege only that they have been injured through discrimination that was directed against others. Moreover, the economic injuries alleged by the plaintiffs herein have nothing to do with their race. Stated most simply, the plaintiffs herein have not been denied the same right to hold real property "as is enjoyed by white citizens." 42 U.S.C. § 1982.

ties. Their Section 1982 claim must fail because they have not alleged that they personally suffered any injury cognizable under that section.

III.

PLAINTIFFS LACK STANDING TO SUE UNDER ARTICLE III OF THE UNITED STATES CONSTITUTION.

Plaintiffs have failed to satisfy the case or controversy requirement of Article III and thus they lack standing to bring this action, even if the Court should find that they have stated a claim under Section 1982 or Section 3612. The injury alleged by plaintiffs—denial of the benefits of living in an integrated society—is necessarily generalized; it is shared by the public at large, and it is insufficient to establish a concrete injury in fact. See *Brief For Petitioners* 42-46. In addition, plaintiffs' alleged injuries are causally related to the defendants' alleged conduct only in a very attenuated sense. See *id.*, 46-52. Finally, plaintiffs' stake in the outcome of the lawsuit is simply insufficient to "insure that exercise of the court's remedial powers is both necessary and sufficient to give [them] relief." *Singleton v. Wulff*, 428 U.S. 106, 124 n.3 (1976) (Powell, J., concurring in part and dissenting in part).

Plaintiffs attempt to distinguish the many decisions of this Court that have denied standing to persons alleging similarly generalized and attenuated injuries, by noting that those cases concerned "a broadly applicable government policy" and were not brought against a private defendant. See *Brief For Respondents* 50. That distinction is not persuasive because the nature of an injury cannot depend upon the identity of the defendant. The injury alleged—being denied the benefits of living in an inte-

grated society—is equally generalized, whether the defendant is a private real estate firm charged with racial steering or a municipality charged with purposely excluding minorities and persons of low income. *Warth v. Seldin*, 422 U.S. 490, 512-14 (1975).

That private parties are defendants does not make the causal connection between the challenged conduct and the alleged injury any less attenuated. The Lawyers' Committee attempts to distinguish *Warth* on the ground that the claims of the plaintiffs herein "are based on experiences *personal to them*, not upon the presumed effect of petitioners' conduct toward others." *Brief For Lawyers' Committee* 8 (emphasis in original). This distinction is both incorrect and wholly irrelevant to the question of standing. First, the distinction must fail because the allegation of discrimination in *Warth* was presumed to be true. *Warth, supra*, 502. Moreover, plaintiffs' claim of discrimination goes to the merits of the lawsuit, and it has no bearing on the standing inquiry, which concerns itself with the quality of the injury alleged. In this respect, *Warth* is indistinguishable. The injury alleged herein is based upon the alleged racial steering of prospective home-seekers and thus wholly depends upon "the presumed effect of [this] conduct toward others." The injury alleged in *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), is also indistinguishable because plaintiffs herein have alleged "that defendants' actions encouraged *others* to make decisions about the [location of housing] which directly affected plaintiffs." *Brief For Lawyers' Committee* 9 (emphasis in original). The Court's prior decisions therefore demonstrate that plaintiffs have failed to meet the requirements of Article III.

CONCLUSION

For all of the reasons stated herein and in defendants' opening brief, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1978

GLADSTONE REALTORS, ET AL., PETITIONERS

v.

VILLAGE OF BELLWOOD, ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1493

GLADSTONE REALTORS, ET AL., PETITIONERS

v.

VILLAGE OF BELLWOOD, ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE

QUESTION PRESENTED

The United States will discuss the following question:

Whether, under Section 812 of the Fair Housing Act of 1968, 42 U.S.C. 3612, residents of a community have standing to maintain a suit against real estate companies and their agents to prevent racial steering in their community.

(1)

INTEREST OF THE UNITED STATES

Congress enacted the Fair Housing Act of 1968, 82 Stat. 81, as amended, 42 U.S.C. 3601 *et seq.*, to implement the "policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." Section 801, 42 U.S.C. 3601. The fulfillment of this objective depends in large measure on the resources available for enforcement. While the Department of Housing and Urban Development and the Attorney General have important responsibilities under the Act,¹ complaints by private persons are the principal method of securing compliance with the fair housing provisions, whether through conciliation or litigation.² *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 211. Accordingly, the United States has a substantial interest in this case, where the issue concerns the class of persons entitled to prosecute complaints under the Act.³

STATEMENT

A. The Statute

The Fair Housing Act prohibits discrimination in the sale or rental of housing by owners, financial

¹ See Sections 808-811, 813, 901 of the Act, 42 U.S.C. 3608-3611, 3613, 3631.

² See Sections 810, 812, 42 U.S.C. 3610, 3612.

³ The United States participated as *amicus curiae* in the court of appeals in this case and in *TOPIC v. Circle Realty*, 532 F.2d 1273 (C.A. 9), certiorari denied, 429 U.S. 859, which raised the same issue. We also so participated in *Trafficante*, *supra*, which involved a similar question.

institutions, and real estate brokers. Specifically, Section 804(a), 42 U.S.C. (and Supp. V) 3604(a), makes it unlawful, *inter alia*, to "refuse to sell or rent after the making of a bona fide offer * * * or otherwise make unavailable or deny, a dwelling to any person because of race."

The Act contains two remedial provisions permitting private persons to enforce its substantive prohibitions.⁴ Under Section 810, 42 U.S.C. 3610, the Secretary of Housing and Urban Development is empowered to receive and investigate complaints regarding discriminatory housing practices. The Secretary must defer to state agencies that can provide relief, but if the state agency does not act, the Secretary may seek to resolve the complaint by "informal methods of conference, conciliation, and persuasion." If these efforts fail, the complainant may proceed to court under Section 810(d). Under Section 812, 42 U.S.C. 3612, the complainant may bring an action in court within 180 days after the alleged discriminatory practice occurred. Section 812 does not require the complainant to seek an administrative remedy before filing suit in federal court, as is required under Section 810.

⁴ In addition, the Attorney General may bring a civil action in federal court against any person who "is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted" by the Act, or when the denial of such rights "raises an issue of general public importance" (Section 813, 42 U.S.C. 3613).

B. This Litigation

On October 24, 1975, respondents—the Chicago suburb of Bellwood, some of its white and black residents,⁵ and an organization seeking to end racial discrimination in housing—filed separate suits against petitioners Gladstone Realtors and Robert A. Hintze Realtors.⁶ Respondents alleged that petitioners engaged in racial steering of prospective homeowners⁷ in violation of Section 804(a) of the Fair Housing Act of 1968, 42 U.S.C. (and Supp. V) 3604(a).⁸ The suits were brought, *inter alia*, pursuant to Section 812 of the Fair Housing Act of 1968, 42 U.S.C. 3612. App. 4-7, 97-100.

In each case, the complaint alleged that the petitioner involved is an Illinois real estate business in Cook County, Illinois, which has engaged in a continuing practice of efforts to influence the choice of prospective homebuyers on the basis of race, and has

⁵ Respondents Edward B. Powell, Mary P. Powell, Charles Elliott, and Vicki Simmons are white residents of Bellwood. App. 5, 97; Pet. App. 10. Respondent Joyce Perry is a black resident of Bellwood. App. 4, 97; 122; Pet. App. 10. Respondent Sandra Sharp is a black resident of the adjacent town of Maywood. App. 4, 97, 123; Pet. App. 10.

⁶ Each case also included several real estate agents, employees of the company defendant, as individual defendants.

⁷ The district court in *Gladstone* defined “racial steering” as “efforts to influence the choice of prospective homebuyers on the basis of race by discouraging prospective black homebuyers from purchasing homes in predominantly white areas” (Pet. App. 1). It also includes efforts to discourage white homeseekers from purchasing homes in integrated areas.

⁸ Respondents also alleged violations of the Civil Rights Act of 1866, 14 Stat. 27, 42 U.S.C. 1982.

discouraged black homebuyers from purchasing homes in a specific part of Bellwood, Illinois (App. 5, 98, 141). The individual respondents, residents of Bellwood and an adjacent town, alleged that they “have been denied their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society.” App. 6, 99. Respondent Village of Bellwood alleged that it “has been injured by having the housing market in such village wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village.” App. 6, 99. Respondent Leadership Council for Metropolitan Open Communities alleged that “acts and practices” of defendants “hamper and interfere with * * * [its] work and purpose” and “cost * * * [it] money to provide an audit and other efforts to eliminate such unlawful acts.” App. 6, 98-99. Respondents sought damages and injunctive relief. App. 6-7, 99-100.

After initial discovery proceedings in both cases, petitioners filed motions for summary judgment. They contended that none of the respondents had standing to sue under Section 812, 42 U.S.C. 3612, because the individual respondents’ discovery responses showed they were not homeseekers. App. 78-82, 143-147. On September 23, 1976, the district court in *Gladstone* granted the motion for summary judgment (Pet. App. A). Basing its opinion on *TOPIC v. Circle Realty, supra*, the court held that Section 812 protects only “‘direct victims’” of racial steering, and that since none of respondents were “actual home-

seekers," they lacked standing to assert their claims. Pet. App. 3-7. On September 29, 1976, the court in *Hintze* likewise granted petitioners' motion for summary judgment, explicitly adopting the earlier *Gladstone* opinion. Pet. App. 8.

The court of appeals consolidated the cases on appeal and reversed,⁹ concluding that the allegations of the individual respondents here were "virtually identical" to those that this Court in *Trafficante* had held were sufficient to establish standing under the Fair Housing Act. Pet. App. 13. The court specifically rejected the argument adopted by the Ninth Circuit in *TOPIC*, that *Trafficante* established broad standing only for suits under 42 U.S.C. 3610. It concluded that *TOPIC* was wrongly decided and held that "there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612." Pet. App. 18, 20.¹⁰

ARGUMENT

INTRODUCTION AND SUMMARY

We submit that the individual respondents have standing to challenge petitioners' racial steering practices under the Fair Housing Act.¹¹ In *Traffi-*

⁹ The court affirmed the denial of standing to the non-profit corporation (Pet. App. 15).

¹⁰ The court also held that the municipality had standing to sue (Pet. App. 13-14).

¹¹ Because the individual respondents, in our view, have standing to assert their claims under the Fair Housing Act, we will not address the question of the standing of the other respondents, nor the applicability of the Civil Rights Act

cante v. Metropolitan Life Ins. Co., *supra*, 409 U.S. at 209, this Court, emphasizing that "complaints by private persons are the primary method of obtaining compliance with the Act," concluded that "[w]e can give vitality to § 810(a) only by a generous construction" of the standing requirements (*id.* at 212). That conclusion is equally valid for complaints arising under Section 812. Nothing in that Section, its legislative history, or the consistent administrative interpretation of the Act suggests a different result, nor are the interests asserted by the respondents here significantly different from those asserted by the petitioners in *Trafficante*. Indeed, if anything, the respondents here allege a more far-reaching effect of the discriminatory practices on their lives than was alleged in *Trafficante*. Moreover, here, as in *Trafficante*, the complainants' standing is supported by a consistent course of administrative interpretation by the Department of Housing and Urban Development, which has substantial responsibilities for administering the Act. Accordingly, the holding and rationale of *Trafficante* lead to the conclusion that respondents here also have standing to enforce the Act.

The standards for determining questions of standing have recently been summarized by this Court in *Warth v. Seldin*, 422 U.S. 490. The Court there noted that the limitation on federal court jurisdiction in Article III of the Constitution requires that the plaintiff show the existence of an actual "case or

of 1866, 42 U.S.C. 1982. See *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264 n. 9.

controversy' " between himself and the defendant. "A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action' " (422 U.S. at 499; citations omitted). In other words, the plaintiff "must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the court's intervention" (*id.* at 508). Beyond the constitutional necessity of showing actual injury to the plaintiff caused by the defendant's actions, prudential considerations ordinarily counsel denying standing to persons asserting generalized grievances or relying on the legal rights and interests of others. But, the Court emphasized, "so long as [the constitutional] requirement is satisfied, persons to whom Congress has granted a right of action, either expressly or by clear implication, may have standing to seek relief on the basis of the legal rights and interests of others, and, indeed, may invoke the general public interest in support of their claim" (*id.* at 501; citations omitted).

This Court's application of these principles in *Warth* and in *Trafficante* indicates that the court of appeals correctly concluded that the individual respondents here have standing to challenge petitioners' racial steering practices.^{11a}

^{11a} The substantial similarity between portions of the argument in this brief and in respondent's brief in this Court—a similarity of which we became aware only upon receiving

I

SUITS BY PERSONS SUCH AS RESPONDENTS ARE NECESSARY
TO ACHIEVE THE PURPOSE OF THE ACT

Racial steering of potential homeowners, which involves determining on the basis of race which houses will be shown—and thus made available—to the home-seeker, violates 42 U.S.C. (and Supp. V) 3604(a) because it "make[s] unavailable * * * a dwelling to * * * person[s] because of race." *E.g.*, *Moore v. Townsend*, 525 F. 2d 482 (C.A. 7); *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071 (D. N.J.); *United States v. Henshaw Bros., Inc.*, 401 F. Supp. 399 (E.D. Va.); *Zuch v. Hussey*, 366 F. Supp. 553 (E.D. Mich.).

This Court in *Trafficante*, *supra*, 409 U.S. at 211, stressed that complaints by private persons are the primary method of securing compliance with the Fair Housing Act, and that such persons "act not only on their own behalf but also 'as private attorneys general in vindicating a policy that Congress considered to be of the highest priority.'" This case provides a

service of respondent's brief after this brief was in page proof—is evidently due to their derivation from a common source: the government's brief *amicus curiae* in *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071 (D. N.J.). A copy of that brief, and of other government filings in cases involving the same issue, was provided to respondents before the briefing of this case below. There was no exchange of draft briefs under preparation for filing in this Court. The analysis of the legislative history of Sections 810 and 812 of the Fair Housing Act is the primary example of this overlap.

particularly strong example of the need for such "private attorneys general," since racial steering violations of the Act are otherwise likely to be immune from attack.

As the court of appeals noted (Pet. App. 11-12), it is difficult for homeseekers who are the direct victims of racial steering by real estate companies to detect the discrimination. A black person who is shown listings in particular neighborhoods does not ordinarily have a way of knowing what listings are made available to whites, and can therefore seldom compare his experience with those of his white counterparts. In the absence of such a comparison, he cannot be sure that his rights under the Act are being violated, much less assemble the evidence necessary to enforce those rights in court. In these circumstances, persons such as respondents, who are not actual homeseekers, may be "the only effective adversary" of the illegal practice. Cf. *Barrows v. Jackson*, 346 U.S. 249, 259; *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 237.¹² Thus here, as in *Trafficante* (409 U.S. at 212), "a generous construction" of the standing requirement is necessary to "give vitality" to the enforcement provisions of the Act.

¹² This analysis is confirmed by the experience of the Housing and Credit Section of the Justice Department's Civil Rights Division: most of the private cases involving racial steering have been brought by persons similarly situated to respondents in the present case, usually on the basis of information developed by "testers"—persons of different races who make identical housing requests to the real estate company to determine whether both are offered houses in the same areas.

II

THE INTEREST ALLEGED BY RESPONDENTS IS SUBSTANTIALLY IDENTICAL TO THAT FOUND SUFFICIENT TO PROVIDE STANDING IN *TRAFFICANTE*

The individual respondents here alleged in substance that petitioners' racial steering practices are resulting in unnaturally rapid racial change amounting to resegregation of their area and that they are thus being deprived of the social, professional, and economic benefits of living in an integrated community. App. 5-6, 98-99. In *Trafficante*, tenants of an apartment complex housing approximately 8200 residents similarly alleged that their landlords' discriminatory rental practices deprived them of the social and professional benefits of living in an integrated community (409 U.S. at 206-208). In both cases, persons who have not themselves been denied housing because of their race claim standing to challenge violations of the Act based on their interest in living in a community from which persons are not unlawfully excluded because of their race. This Court concluded in *Trafficante* that this interest was sufficient both to satisfy the constitutional standing requirements and to bring plaintiffs within the statutory grant of standing (409 U.S. at 211):

The dispute tendered by this complaint is presented in an adversary context. *Flast v. Cohen*, 392 U.S. 83, 101. Injury is alleged with particularity, so there is not present the abstract question raising problems under Art. III of the

Constitution. The person on the [defendant's] blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community," 114 Cong. Rec. 2706, and as Senator Mondale * * * said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living patterns." 114 Cong. Rec. 3422.

That language is directly applicable here. Petitioners contend that there is a constitutionally significant difference in the interests asserted, simply because respondents here are residents of a suburban village, instead of a large apartment complex as in *Trafficante*. But that factual difference has no significance to the relevant inquiry. Respondents here, like petitioners in *Trafficante*, have alleged an actual injury to their own interests that results from petitioners' illegal activities.

The injury to respondents' interest in living in an integrated community is no less real because it is suffered by the entire community, rather than only by the residents of a single housing complex.¹³ In-

¹³ Petitioners argue (Br. 49) that respondents lack standing because they allege an "extremely generalized injury shared by a large group of persons." However, this Court has held, in an analogous context, that standing is not to be denied simply because many people suffer the same injury. *United States v. SCRAP*, 412 U.S. 669, 687. The result, otherwise, would be that "the most injurious and widespread Government actions could be questioned by nobody." *Id.* at 688. The plaintiffs in *SCRAP* (who claimed only a harm to their use and enjoyment of the natural resources in the Washington area) were thus allowed standing to challenge ICC

deed, the harm suffered by respondents may be more severe than that of the plaintiffs in *Trafficante*. Residents of an all-white housing complex need only look to the next residential facility for interracial associations and need not move to another community to avoid living in a segregated environment, but Bellwood residents may have to go to an entirely different community or area. See *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071, 1081 (D. N.J.).¹⁴

This Court's reliance in *Trafficante* (409 U.S. at 211) on *Shannon v. United States Department of*

orders, which they alleged violated the National Environmental Policy Act of 1969.

The *SCRAP* rationale is equally applicable here, where respondents sue under the Fair Housing Act to protect their right to live in an unsegregated community. The challenged practice of racial steering is particularly pernicious because it is apparently widespread and is difficult to detect and prove. Of the more than 300 cases brought under the Fair Housing Act by the United States (see 42 U.S.C. 3613) to date, at least 80 have involved allegations of some form of racial steering.

¹⁴ Every other court that has considered the question has found interests like those asserted by respondents here constitutionally sufficient to provide standing to challenge racial steering practices. *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486 (E.D. N.Y.); *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*; see also *Village of Park Forest v. Fairfax Realty*, P-H EOH Rep. ¶ 13,784, decided August 9, 1976). The court in *TOPIC v. Circle Realty*, 532 F. 2d 1273 (C.A. 9), certiorari denied, 429 U.S. 859, did not reach the constitutional issue, since it decided there was no statutory grant of standing. See *infra* at pp. 20-23.

Housing and Urban Development, 436 F. 2d 809 (C.A. 3), is also inconsistent with petitioners' asserted distinction. In *Shannon*, businessmen and residents of an urban renewal area in Philadelphia brought suit under the Fair Housing Act and other statutes claiming that the action of HUD threatened to resegregate their community. The court of appeals held that the plaintiffs had suffered a cognizable injury because HUD's actions not only could impair their economic interests, but would affect "the very quality of their daily lives." *Shannon*, *supra*, 436 F. 2d at 818. Accord, *South East Chicago Commission v. Department of Housing and Urban Development*, 343 F. Supp. 62, 66 (N.D. Ill.), affirmed, 488 F. 2d 1119 (C.A. 7); *Fox v. United States Housing and Urban Development*, 416 F. Supp. 954 (E.D. Pa.). The respondents here also reside in a specific community and assert that the quality of their daily lives is adversely affected by the racial steering practices of local real estate companies. App. 5-6, 98-99. Here, as in *Shannon*, the complaining residents have suffered actual injury from the defendants' alleged endeavors to resegregate their community.

Moreover, the causal connection between racial steering and segregated communities has been demonstrated in federal litigation. See, e.g., *Zuch v. Hussey*, 394 F. Supp. 1028 (E.D. Mich.), affirmed, 547 F. 2d 1168 (C.A. 6).^{14a} Petitioners' assertions (Br.

^{14a} See also, *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1240 (N.D. Ga.); *United States v. Mitchell*, 335 F. Supp. 1004,

47-50) that such causal relationships are "speculative" and "insubstantial" are no substitute for a reasoned decision, after proof developed through discovery and expert testimony, concerning the effects of petitioners' alleged actions on the racial makeup of the Bellwood community. See *Trafficante*, *supra*, 409 U.S. at 209-210.¹⁵

Petitioners nevertheless suggest that the causal connection between their actions and the respondent's injury is too weak to afford standing to respondents. They attempt to analogize this case to *Warth v. Seldin*, *supra*, in which various individuals and organizations challenged a community zoning ordinance, alleging that it excluded persons of low and moderate income (422 U.S. at 493). Emphasizing that the petitioners'

1005-1006 (N.D. Ga.), affirmed, 474 F. 2d 115 (C.A. 5), certiorari denied, 414 U.S. 826; *Barrick Realty, Inc. v. City of Gary, Indiana*, 354 F. Supp. 126, 135 (N.D. Ind.), affirmed, 491 F. 2d 161 (C.A. 7), on the role of real estate agents in encouraging rapid racial change in a community.

✓ In *Zuch v. Hussey*, *supra*, the court's finding of a causal connection between racial steering and resegregation of the community was aided by the testimony of an expert in sociology and social psychology and an expert in population and demographics. These experts explained to the court how the practice of racial steering can lead to the destruction of integrated neighborhoods. 394 F. Supp. at 1031-1034. Respondents here apparently planned to utilize similar expert testimony at trial on the merits. See App. 28, 117.

Moreover, as the court below noted (Pet. App. 12), petitioners have not yet responded to respondents' requests for discovery; those responses may well disclose instances in which actual homeseekers were steered away from appropriate housing.

allegations suggest "that their inability to reside in [the community] is the consequence of the economics of the area housing market, rather than of respondents' assertedly illegal acts" (422 U.S. at 506), the Court found that petitioners in *Warth* had failed to show that "absent [the challenged] practices, there is a substantial probability that * * * if the court affords the relief requested, the asserted inability of petitioners will be removed" (*id.* at 504).

There is, at least *prima facie*, such a substantial probability here. Respondents' complaint (like that in *Trafficante*) alleges that their desire to live in an integrated community is directly frustrated by petitioners' discriminatory refusal to provide equal access to available housing to any qualified applicant.¹⁶ Of course, the actual benefit sought, here as in *Trafficante*, depends ultimately on the housing decisions of third parties, but plaintiffs here, as in *Trafficante*, should be allowed to prove that, absent the artificial barriers imposed by defendants, these decisions would be likely to result in housing patterns more reflective of the racial mixture in the area.

¹⁶ This case is thus quite different from *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 42-43, in which plaintiffs' alleged injury resulted from the actions of persons not before the court. See also *Warth v. Seldin*, *supra*, 422 U.S. at 505.

III

SECTION 812 OF THE FAIR HOUSING ACT, 42 U.S.C. 3612, CONFERS STANDING ON THESE RESPONDENTS

Petitioners' attempt to analogize this case to *Warth v. Seldin*, *supra*, rather than *Trafficante* fails for an additional independent reason. In *Warth*, this Court noted that the "critical distinction" between that case and *Trafficante* was the failure of the *Warth* plaintiffs to assert, or make out, a claim under the Fair Housing Act. 422 U.S. at 513. Here, as in *Trafficante*, respondents rely on a statutory right "which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute." *Warth v. Seldin*, *supra*, 422 U.S. at 514. See also *Linda R. S. v. Richard D.*, 410 U.S. 614, 617 n. 3; *Sierra Club v. Morton*, 405 U.S. 727, 732 n. 3; *Trafficante v. Metropolitan Life Ins., Co.*, *supra*, 409 U.S. at 212. That right under the Fair Housing Act has allegedly been violated by petitioners' racial steering practices. See, e.g., *Zuch v. Hussey*, *supra*.

Petitioners' argument that respondents may not rely on a statutory right to sue under the Fair Housing Act turns on the assertions that *Trafficante* construed only Section 810 of that Act, 42 U.S.C. 3610, and that Section 812, 42 U.S.C. 3612, upon which respondents rely, must be construed to include a substantially narrower grant of standing. The first assertion is not free from doubt, and the second is in any event incorrect.

A. *Trafficante* Suggests No Difference in the Standing Conferred by Sections 810 and 812 of the Act

Trafficante began as a suit brought pursuant to both Section 810 and Section 812; indeed, the intervening plaintiffs asserted standing only under Section 812 and 42 U.S.C. 1982. See *Trafficante v. Metropolitan Life Insurance Co.*, 446 F. 2d 1158 (C.A. 9), affirming 322 F. Supp. 352 (N.D. Cal.). Although this Court focused on Section 810 in making its ruling, it discussed both Sections 810 and 812 without distinguishing between the two so far as standing requirements are concerned. See, e.g., 409 U.S. at 209.¹⁷ Thus, it was the understanding of the district court in *Trafficante* on remand (see Consent Order of December 7, 1972), and of other courts that have considered this question, that this Court's decision applies to claims arising under Section 812 as well as those under Section 810. *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*; *Village of Park Forest v. Fairfax Realty*, *supra*. See also *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*. Contra, *TOPIC v. Circle Realty*, 532 F. 2d 1273 (C.A. 9), certiorari denied, 429 U.S. 859.¹⁸

¹⁷ Although the Court specifically noted (409 U.S. at 209 n. 8) that it found it unnecessary to decide whether petitioners had standing under 42 U.S.C. 1982, it made no such disclaimer with respect to Section 812, on which some of petitioners relied exclusively, apparently not considering the differences between the two provisions of the Housing Act significant.

¹⁸ The court of appeals in the present case found it "impossible to tell with certainty" whether *Trafficante* was meant to

Moreover, in *Trafficante* this Court accorded "great weight" to the construction given the Fair Housing Act by the Department of Housing and Urban Development, since that agency has substantial responsibilities for administering the Act. 409 U.S. at 210. See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424, 433-434; *Udall v. Tallman*, 380 U.S. 1, 16.

HUD has consistently construed Sections 810 and 812 as providing alternative judicial remedies, either of which may be invoked by the same class of persons. In the regulations promulgated by the Secretary to enforce the Act, the Secretary provides that: "The person aggrieved shall be notified of the date of filing [of the administrative complaint pursuant to Section 810] and of his right to bring court action under sections 810 and 812." 24 C.F.R. 105.16.¹⁹

Although HUD has no enforcement powers under Section 812, we are advised by HUD that, since the passage of the Act, it has accepted, investigated, and attempted to conciliate racial steering complaints from fair housing groups, municipalities, and residents of the communities involved whose interest was in counteracting efforts to segregate their communities, as well as from actual homeseekers. The letters sent by HUD to all such complainants (whether or not

control cases arising under Section 812, see Pet. App. 17-18, but concluded, as we do, that in any event the rationale of *Trafficante* supports respondents' standing here.

¹⁹ The definition of "person aggrieved" contained in the regulations is the same definition contained in Section 810 of the Act. Compare 24 C.F.R. 105.12 with 42 U.S.C. 3610(a).

they are actual homeseekers) at every step in the administrative complaint process have informed them that they may also institute litigation pursuant to Section 812. In addition, HUD's 1976 pamphlet, *Fair Housing USA*, describes Sections 810 and 812 as being alternative modes of enforcement of the Act. HUD's position has consistently been that both remedies are available for use by any person enforcing rights under the Fair Housing Act, and that a challenge to a discriminatory housing practice under either Section does not bar a complainant from pursuing the alternative remedy.

B. The Structure of the Statute and Its Legislative History Indicate That There Is No Difference in the Scope of the Two Sections

In arguing that Section 812 should be read more narrowly than Section 810, petitioners emphasize (Br. 22-23, 29) that only Section 810 describes the parties authorized to file suit as "persons aggrieved". They further point out (Br. 21-22) that only that Section requires plaintiffs to exhaust their administrative remedies before filing suit. Neither of these differences between the two sections provides a basis for a meaningful distinction between their standing requirements.

Petitioners in effect ask this Court to adopt the rationale of the Ninth Circuit in *TOPIC v. Circle Realty*, *supra*, 532 F. 2d at 1275-1276.²⁰ Although

²⁰ That rationale is inconsistent with the decisions in most cases that have considered the issue. See, in addition to the cases noted at p. 18, *supra*, *Heights Community Congress v.*

the *TOPIC* court apparently made no inquiry into the legislative history of the Act (the opinion makes no reference to such history), it concluded that:

(1) Since Section 810 contains a broad definition of "person aggrieved",²¹ and since Section 812 has no definition, Section 812 must be narrower. 532 F. 2d at 1275.

(2) The purpose of direct suits pursuant to Section 812 was to provide swift relief to a narrow class of complainants, whereas Section 810 "contemplates the resolution of disputes in the slower, less adversary context of administrative reconciliation and mediation." 532 F. 2d at 1276.

(3) Cases dealing with "prolonged practice[s] spanning many years" rather than individual grievances should more appropriately go through HUD and be handled pursuant to Section 810, whereas Section 812 can better accommodate complainants "seeking to rent or purchase [specific] housing." *Ibid.*

The legislative history of the Act does not contain a single suggestion that standing under Section 812

Rosenblatt Realty, 73 F.R.D. 1 (N.D. Ohio); *Cornelius v. City of Parma*, 374 F. Supp. 730, 741 (N.D. Ohio), vacated on other grounds, 506 F. 2d 1400 (C.A. 6), vacated for further consideration, 422 U.S. 1052, remanded, 521 F. 2d 1401 (C.A. 6). Cf. *Zuch v. Hussey*, 366 F. Supp. 553 (E.D. Mich.) and 394 F. Supp. 1028 (E.D. Mich.).

²¹ The term is defined as including "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur." 42 U.S.C. 3610.

was designed to be narrower than standing under Section 810.²² Throughout the legislative history, the administrative and judicial remedies were described as alternatives to one another—to be used against the same kinds of conduct, and available to the same kinds of complainants. Moreover, the legislative history shows that the *TOPIC* court was in error with respect to each of the three above-cited propositions on which it rested its decision. The words “person aggrieved” were intended to limit, rather than expand, standing, so that their omission from Section 812 suggests at least equal standing to that accorded to complainants under Section 810. The administrative remedy was included not for “slower, less adversary” proceedings, but because its proponents regarded it as quicker.²³ Finally, far from intending to

²² The legislative history cited by petitioners (Br. 29-34) indicates that Congress included the “bona fide offer” requirement in the Act to protect against the use of the Act for purposes of harassment. 114 Cong. Rec. 5515 (1968). This colloquy does not suggest that any of the participants believed that there was any difference in the types of complaints to be handled by HUD and the courts, still less that Section 812 contained a stricter standing requirement than Section 810. In any event, the “bona fide offer” requirement applies only to refusals to sell or rent housing and not to the other prohibitions (such as racial steering) in Section 804, 42 U.S.C. (and Supp. V) 3604. *United States v. Youritan Construction Company*, 370 F. Supp. 643, 650 (N.D. Cal.), modified and affirmed, 509 F. 2d 623 (C.A. 9). Thus, the legislative history of that requirement in no way suggests that Congress intended to limit persons affected by racial steering violations to administrative remedies pursuant to Section 810.

²³ The congressional concern about the slow pace of direct litigation is also reflected in the requirement of expedition in

confine major, complex cases to HUD rather than the courts in the first instance, Congress permitted the complainant to choose an administrative remedy in any case, in part on the theory that HUD could dispose swiftly of minor cases and prevent them from becoming a burden for the courts.²⁴

1. *The Omission of the Phrase “Person Aggrieved” From Section 812 Does Not Limit the Scope of That Section*

The legislative history of the 1968 Act begins in 1966, when administration bills containing provisions for “open housing” were introduced in both the House and Senate.²⁵ The 1966 bills provided for enforcement only by an action in a United States District

cases brought under Sections 812 and 813. See Section 814, 42 U.S.C. 3614.

²⁴ The theory that the more complex cases were to be handled administratively overlooks the fact that even under Section 810, a person may seek a judicial remedy in a *de novo* proceeding. Furthermore, “pattern or practice” suits and other suits raising issues of general public importance brought by the Attorney General under Section 813 can be expected to involve issues very similar to those brought by individuals acting as “private attorneys general” under Section 812. There is no reason to conclude that Congress thought the courts an appropriate forum only for the former class of cases, and not the latter.

²⁵ 112 Cong. Rec. 9501 (Introduction of H.R. 14770, referred to Judiciary Committee, May 2, 1966); 112 Cong. Rec. 9501 (Introduction of H.R. 14765, referred to Judiciary Committee, May 2, 1966); 112 Cong. Rec. 9393 (Introduction of S. 3296, April 28, 1966).

Court or in an appropriate state court.²⁶ The question of who would have standing to bring suit was raised in both House and Senate hearings. Representative Cramer criticized the bill on the ground that it simply provided that the " 'rights granted * * * may be enforced by civil action,' " without limiting standing to "persons aggrieved." Representative Cramer observed that the right to sue under the comparable public accommodations statute was limited to "the party aggrieved," and that omission of this limitation indicated that a third party might bring the suit on the victim's behalf. Attorney General Katzenbach stated that he had no objection to the words being inserted, but that he thought it unnecessary. Hearings on Civil Rights, 1966 (H.R. 14765) before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 2d Sess. 1203 (1966). The words "persons aggrieved" were not inserted. In Representative Cramer's view, this made standing broader than if the words had been included; in Attorney General Katzenbach's view, it made no difference. Both views are directly contrary to that of the court in *TOPIC*, which thought the inclusion of the words "persons aggrieved" in Section 810 made standing under that Section broader.²⁷

²⁶ Hearings on Civil Rights, 1966 (H.R. 14765) before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong. 2d Sess. 716 (1966). Section 403 of that bill contained a provision similar to the provision in Section 804 of the 1968 Act that has been held to prohibit racial steering.

²⁷ The Senate hearings contain Senator Ervin's comment that the judicial remedy provision "doesn't even have a requirement that the plaintiff shall have been refused the rental

2. Section 812 Was Not Designed to Provide Swifter Relief Than Section 810 or to Apply to a Smaller Group of Complainants

Congress began considering proposals for administrative remedies during its hearings on the 1966 bills.²⁸ Testimony at the hearings and the floor debate indicate that the purpose of the proposed alternative administrative remedies was to provide an expeditious method of resolving complaints of housing discrimination without the necessity of filing a complaint in federal court.

One such proposal would have created a Fair Housing Board, with powers similar to those of the National Labor Relations Board. Report to accompany H.R. 14765 of the Committee on the Judiciary, H.R. Rep. No. 1678, 89th Cong., 2d Sess. 9-12 (1966).²⁹ Representative Conyers summarized as follows the

or purchase of real estate", and that "a person who hasn't even applied for admission" to a residential home could recover damages. Hearings on S. 3296, etc. before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 89th Cong., 2d Sess. 395-396 (1966).

²⁸ Hearings on S. 3296, etc. before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 89th Cong., 2d Sess. (p. 554, Roy Wilkins, Chairman of the Leadership Conference on Civil Rights and Executive Director of the National Association for the Advancement of Colored People, June 16, 1966; p. 68, Senator Edward M. Kennedy, June 6, 1966; p. 69, Senator Hugh Scott, June 6, 1966; p. 915, Senator Javits, June 28, 1966) (1966).

²⁹ The Board would have been authorized to adjudicate complaints of housing discrimination to be filed with HUD, if HUD was unable to resolve the matter through conciliation (112 Cong. Rec. 17122 (1966)).

need for an administrative procedure to supplement the judicial remedies already provided (112 Cong. Rec. 18402 (1966)): ³⁰

Experience with comparable State and local agencies repeatedly has shown that the administrative process is quicker and fairer. It more quickly implements the rights of the person discriminated against and also quickly resolves frivolous and otherwise invalid complaints. Conciliation is easier in an informal administrative procedure than in the formal judicial process. Also individual court suits would place a greater burden of expense, time and effort on not only the plaintiff but on all other parties involved, including the seller, broker and mortgage financier, and on the judicial system itself.

Representative Conyers further noted (*id.* at 18407) that "parallel forms of relief * * * [would be] available in court and before the Commission". Indeed, Representative McClory opposed the creation of the Fair Housing Board precisely because it created a "duplicate matter of enforcement" with the judicial method (112 Cong. Rec. 18401, 18405 (1966)).

The 1966 bills were not enacted, and legislation similar to that introduced in 1966 was proposed in 1967 (113 Cong. Rec. 3899, 3922, 3946). The 1967 proposals contemplated suits by the Attorney Gen-

³⁰ Rep. Conyers was a member of the Judiciary Committee when the Fair Housing Board Amendment was discussed; the quoted material is contained in a statement explaining that amendment prepared for the Congressional Record. See also *id.* at 18405, 18409.

eral, supplemented by administrative procedures within HUD. HUD was to be given authority to issue cease and desist orders and such orders were to be subject to judicial review. Again, the alternative administrative procedure was proposed on the theory that it would be faster than litigation.³¹ No legislation was enacted in 1967.

3. Sections 810 and 812 Were Designed to Provide Parallel Remedies for the Redress of Precisely Similar Grievances

On February 28, 1968, Senator Dirksen proposed an amendment containing the enforcement procedure that was ultimately enacted in the Fair Housing Act.³² The Senate passed the bill substantially in this form on March 11, 1968,³³ and the House enacted it on April 10, 1968.³⁴

During the floor debate in the House on the Dirksen amendment, Representative Celler, the Chairman of the Judiciary Committee which reported out the bills, explained that Section 812, which provides for direct litigation in federal or state court without prior administrative process, was "[i]n addition to adminis-

³¹ Hearings on S. 1358, etc. before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 108 (testimony of Roy Wilkins, Director of the NAACP and Chairman, Leadership Conference on Civil Rights) (1967).

³² 114 Cong. Rec. 4570.

³³ 114 Cong. Rec. 5992.

³⁴ 114 Cong. Rec. 9620.

trative remedies" contained in Section 810 (114 Cong. Rec. 9560 (1968)). His explanation of the three methods of obtaining compliance provided for in the bill (administrative conciliation, private suits, and suits by the Attorney General) does not classify any rights as enforceable exclusively under Section 810, nor does it differentiate between classes of plaintiffs or suggest that the Section 810 procedure is for some kinds of complaints and the Section 812 procedure for others. 114 Cong. Rec. 9560-9561 (1968). That no distinction was intended as to eligible plaintiffs and remedies as between Section 810 and 812 was also recognized by a memorandum prepared by the staff of the House Committee on the Judiciary, which Representative Gerald Ford urged the House to consider and placed in the Congressional Record (114 Cong. Rec. 9609 (1968)). That memorandum explained that Section 812 is "apparently an alternative to the conciliation-then-litigation approach" of Section 810 (*id.* at 9612).

In summary, there is no suggestion in any of the legislative history in 1966, 1967 or 1968 that a narrower class of plaintiffs could litigate directly under Section 812 than might utilize the administrative process under Section 810. On the contrary, the administrative remedy was designed to provide an alternative method of seeking relief that is less formal and less expensive but lacks compulsive power, with the assurance that the complainant remains free to seek a judicial remedy if he prefers.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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SEPTEMBER 1978.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1493

GLADSTONE REALTORS®, ET AL.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, ET AL.,
Respondents.

ROBERT A. HINTZE, REALTORS®, ET AL.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, ET AL.,
Respondents.

**AMICUS CURIAE BRIEF OF THE
NATIONAL ASSOCIATION OF REALTORS®
IN SUPPORT OF PETITIONERS**

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**AMICUS CURIAE BRIEF OF THE
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IN SUPPORT OF PETITIONERS**

**INTEREST OF THE
NATIONAL ASSOCIATION OF REALTORS®**

1. **Preliminary.** The interest of NAR in this cause is direct, vital and immediate.

The Court of Appeals has held that persons having no intention of buying, renting, or selling a home nevertheless have

standing to sue a real estate broker or salesperson under Section 3612 of the Fair Housing Act of 1968 § 42 U. S. C. § 3612, for conduct which they allege "deprives them of the social and professional benefits of living in an integrated society." *Village of Bellwood v. Gladstone REALTORS®*, 562 F. 2d 1013, 1020 (7th Cir. 1978).

This decision of the Court of Appeals involves the interests of NAR for the following reasons:

First, the decision will fundamentally affect the nature of the relationship between the real estate brokers and salespersons and their clients and customers;

Second, the decision will vitally affect the nature and type of real estate services which will be made available and the manner in which those services will be performed; and

Third, the decision will determine the extent to which real estate brokers and salespersons will be subjected to lawsuits generated by lawyers and legal service organizations.

2. The Identity of NAR. The interest of NAR in the decision in this cause can best be understood if NAR is identified.

Founded in 1908, NAR is headquartered in Chicago, Illinois. It is a non-profit professional association of persons engaged in all phases of the real estate business, including, particularly, brokerage, appraising, management, and counseling.

NAR is the owner of various registered service and collective membership marks, including the mark "REALTORS®". Over the years NAR has promoted a public understanding of the term "REALTOR®" as identifying a member of the NATIONAL ASSOCIATION OF REALTORS® engaged in the real estate business on a professional basis and subscribing to and bound by a strict Code of Ethics.

NAR has been successful in promoting this understanding and, as a consequence, it is the beneficiary of "good will" which is recognized as extremely valuable by the public and a large number of real estate practitioners.

Because of the value of the term "REALTOR®" and also because of the many and varied services available from NAR, real estate boards have sought affiliation with NAR as Member Boards of REALTORS®. Such affiliation is accomplished by the issuance of a charter by NAR according membership privileges and granting the Board the right to use the term "REALTOR®" in a specified geographic area in exchange for the Board's agreement to service their members and the public, to enforce the Code of Ethics, and to assist in safeguarding the registered marks of NAR.

Today, the membership of NAR includes 50 State Associations of REALTORS®, over 1700 Member Boards of REALTORS®, and approximately 600,000 REALTORS® and REALTOR-ASSOCIATE®s.

NAR was created to promote and encourage the highest and best use of the land, to protect and promote private ownership of real property, and to promote professional competence. In pursuit of these objectives, NAR is concerned with a wide range of activities—real estate education, home protection, arbitration of member and public controversies, equal opportunity in housing, real estate licensing, public service, neighborhood revitalization, and legislation relating to the real estate business.

3. The interest of NAR in Fair Housing. The Code of Ethics of NAR, to which all members are required to subscribe, provides in Article 10:

The REALTOR® shall not deny equal professional services to any person for reasons of race, creed, sex, or country of national origin. The REALTOR® shall not be a party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, sex, or country of national origin.

This article was adopted by NAR in support of the letter and spirit of the Federal Fair Housing Act of 1968 as well as the Civil Rights Act of 1866 as applied by this Court in *Jones v. Mayer Co.*, 392 U. S. 409 (1968).

In further recognition of its legal and moral obligation to support fair and equal housing opportunity, NAR has established a Code for Equal Opportunity which has been adopted and implemented by all of its Member Boards and has created, in collaboration with the Department of Housing and Urban Development, the first nationwide Affirmative Marketing Agreement in the real estate industry. Presently, over 250,000 REALTORS® and REALTOR-ASSOCIATES® have subscribed to this Agreement and over 14,000 additional subscribers are being processed each month.

Consistent with its total commitment to fair and equal housing opportunity, NAR has initiated a nationwide neighborhood revitalization program to limit urban blight and has coupled this program with a broad range of activities to generate or encourage new sources of home financing for low and moderate income families.

No other organization in the real estate industry has committed more of its time and human and material resources to the goals of the Federal Fair Housing Laws than has NAR.

PURPOSE OF THIS BRIEF AMICUS CURIAE.

The purpose of NAR in submitting this brief is to present the views of the chief representative of the organized real estate profession as to the effects of the Court of Appeals decision in this cause if allowed by this Court to stand.

This brief appears appropriate in view of the fact that nowhere in the decision of the Court of Appeals does it appear that the slightest attention was given to the impact or effects of the decision on the real estate brokerage business and those engaged in it.

Yet in its laudable desire to discourage discrimination in housing, the Court below has created an instrument of legal harassment and oppression unprecedented in American jurisprudence. In its legitimate concern for the interests of the home-

seeker, the Court has countenanced a concept of standing which cannot help but incite litigation, coerce unwarranted settlements, discourage legitimate business activity, and reward perjury.

We do not propose herein to duplicate the statement of facts and legal arguments so ably presented in Petitioner's Brief. Rather, we would support and adopt such statement and arguments as our own.

We would, however, preface our Argument by highlighting several facts concerning Plaintiffs' activities as "testers" and the relationship of such activities to this action. While the Court below attempted to distinguish between Plaintiffs as "testers" and Plaintiffs as persons allegedly "denied the right to live in an integrated society," as shown below its effort falls far short of the mark.

The reason Plaintiffs are before this Court is solely because of their experience as testers. This experience is so central to their status as Plaintiffs that any determination of their standing cannot ignore it. The limitations inherent in the testing experience are the limitations which should disqualify Plaintiffs' claim of standing here.

The testing experience is premised on pretense. The tester's identity as a homebuyer is fictitious, his housing needs are unreal, and his responses are wholly contrived.

The testing experience is lawyer manipulated. Thus, the testing program is organized by an attorney or a group of attorneys offering legal services through an organization such as the Leadership Council For Metropolitan Open Communities. Such attorneys train and direct the testers, evaluate their reports, and determine how such reports shall be used.

The testing experience involves an inherent bias. Testers are usually unpaid and hence are motivated to act as testers by a "special interest" in civil rights problems and a conviction that the targets of the testing are the cause of such problems. Testers, unlike investigators for law enforcement agencies, have no obli-

gation of fairness or balance. On the contrary, testers are free to construe even innocent conduct as evidence of guilt.*

Because of these qualities, the product of the testing experience is extremely unreliable. Where, as is the usual case, the only use made of the testing experience is to alert law enforcement agencies to suspected discrimination, the dangers posed by this unreliability can be mitigated by the independent investigation and verification procedures employed by such agencies.

Where, as here, the testing experience becomes the vehicle for the generation of a lawsuit seeking over \$300,000 in damages and broad injunctive relief, its unreliability and inherent susceptibility to use as a means of gaining publicity, legal fees, clients, and coerced settlements must be considered in evaluating whether the interests of the tester turned Plaintiff represent the type of "personal stake in the outcome of the controversy," *Flast v. Cohen*, 392 U. S. 83, 99 (1967), which justifies standing.

As the ensuing argument will demonstrate, the metamorphosis of testers into Plaintiffs does not make reality out of pretense, or produce "injury in fact" from a real estate transaction that "never was."

ARGUMENT.

I. **Introduction.** The outcome of this case turns on whether or not this Court intended by its decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U. S. 205 (1972) to grant

* Illustrating that even non-discriminatory conduct is vulnerable to misinterpretation by biased testers is the report of tester Lonnie M. Randolph concerning his meeting with Beverly Ricchiuto in which, after finding no cause for objection in the manner in which he was treated, added a postscript to his report as follows:

"P.S. I think they knew I was coming.

—Had Equal Opportunity sign up.

—very friendly

—Favortism [sic] toward Bellwood."

Appendix, page 59.

standing to sue under Section 3612 of the Fair Housing Act, 42 U. S. C. Section 3601, *et. seq.*, to any person prepared to allege a violation of such Act.

This is the construction placed upon this Court's *Trafficante* decision by the Court below. By adopting this construction, the Court below was able to find that Plaintiffs had standing to bring this suit notwithstanding the fact that

(a) Plaintiffs were admittedly *not* bona fide homebuyers nor authorized law enforcement agents or investigators;

(b) Plaintiffs were enlisted to bring this suit by a legal service organization whose lawyers represent Plaintiffs here on a contingent fee basis and which is seeking to recover alleged damages in excess of \$300,000.00 in these cases in addition to awards of attorneys' fees and costs; and

(c) Plaintiffs were admittedly *not* deprived of access to available housing of their choice or of neighborhoods of their choice or of communities of their choice. Appendix, p. 111.

The Court below has concluded that this Court's *Trafficante* decision has constituted every citizen a "private attorney general" under the Fair Housing Act, *Bellwood*, 569 F. 2d at 1019 and authorized him to sue any person, firm, corporation or organization whom he believes is engaged in conduct which denies anyone anywhere the "benefits of living in an integrated society."

The NATIONAL ASSOCIATION OF REALTORS® does not believe this Court intended its *Trafficante* decision to be so broadly construed. Such a construction is not only contrary to the express language and rationale of the *Trafficante* decision, but is also contrary to the statutory design of the Fair Housing Act and inconsistent with this Court's established principles governing standing.

II. The Trafficante decision of this Court does not warrant or require the construction adopted by the Court of Appeals.

There are three reasons why the decision of the Court of Appeals below is inconsistent with and contrary to this Court's decision in the *Trafficante* case.

First, while this Court was willing to extend standing beyond the persons seeking occupancy in a housing unit, such extension of standing was specifically restricted to those persons "in the same housing unit who are injured by racial discrimination . . ." *Trafficante*, 409 U. S. at 212. *Emphasis Supplied*. That this extension of "standing" was intended to be limited to those persons occupying the same housing unit is confirmed by the concurring opinion of Justices White, Blackmun and Powell. Those Justices agreed, with some misgiving, to sustain standing provided such standing was limited to those ". . . in the position of petitioners in this case," *Id.*, that is, occupants of the same housing unit.

It is one thing to extend standing to persons occupying the same housing unit, operated by the same management, utilizing common facilities, and having essentially the same address. It is quite another to extend standing, as the Court below has done, to any person from anywhere who chooses to charge a violation of the Fair Housing Act in respect of a residential real estate transaction.

In the *Trafficante* case the number of persons to whom standing to sue was extended was both ascertainable and limited by the number of persons occupying the housing unit. Here the number of persons who would have standing under the decision of the Court below is both unascertainable and unlimited. Thus, if standing derives from the denial of "benefits of living in an integrated society," then standing would necessarily be extended to all members of society—beyond the occupants of the housing unit, beyond the neighborhood, beyond the city, village or com-

munity, beyond the state to every citizen in every jurisdiction in which the Fair Housing Act is law.

Standing which is extended to every person merely by reason of his being a member of society destroys utterly the meaning and purpose of the standing doctrine.

Second, the *Trafficante* decision does not compel or require the decision of the Court below because of the nature of the injury asserted and the relationship of the defendant to that injury.

In *Trafficante* the alleged injury involved the denial of the opportunity to live in an integrated housing unit. To the extent this injury could have occurred as a result of discriminatory conduct, only one person could be held responsible—the defendant landlord and its management agents. Likewise, the defendant had it within its power to cure the injury and correct the conditions giving rise to it.

Here the *Trafficante* relationship between the alleged injury and the defendant cannot possibly exist. Thus, to the extent Plaintiffs have been denied the opportunity to live in an integrated society, defendant cannot be held solely, primarily or even remotely responsible. If our society is not integrated, it is not because an agent of Defendant failed in the game of "let's pretend" he played with Plaintiffs. It is the fault of everyone who created and countenanced the enforcement of racially restrictive covenants for all the years prior to 1948 and this Court's decision in *Shelly v. Kraemer*, 334 U. S. 1 (1948). It is the fault of the late discovery that the "separate but equal" doctrine which governed the operation of the public schools until *Brown v. Board of Education*, 347 U. S. 483 (1954) also encouraged and reinforced segregated housing patterns. It is the fault of the Federal Housing Administration which until the late 1940's administered its mortgage insurance programs on the basis of a policy that

" . . . it is necessary that properties shall continue to be occupied by the same social and racial classes." Under-

writing Manual, U. S. Federal Housing Administration, Part II, Section 233 [November 1, 1936].

It is the fault of the Congress which waited until 1968 before enacting the Fair Housing Act and even the fault of this Court which failed to perceive the mandate of the Civil Rights Act of 1866 until 1968. *Jones v. Mayer Co.*, 392 U. S. 409 (1968). And ultimately it is a fault which must be shared by every home-buyer and seller and real estate practitioner who has ever permitted prejudice to become a consideration in his or her housing decisions.

To predicate Plaintiff's standing to sue one or two real estate agents out of more than one million licensees engaged in business because of their failure to respond adequately to hypothetical questions posed by theoretical homebuyers in an artificial transaction and to do so on the premise that this is necessary to defend the opportunity to live in an integrated society makes the concept of standing a travesty. Yet this is precisely the predicate upon which the Court below has premised its decision.

Third, the *Trafficante* decision does not compel or require the decision of the Court below because of the relationship of the Plaintiffs to the Defendant.

In *Trafficante* the Plaintiffs had a *bona fide* contractual relationship with the Defendant landlord. They were its tenants. In this capacity, they paid rent to purchase the services of Defendant landlord's agents and had reason to expect and require that the management services they purchased, in common with other tenants, would be rendered in accordance with the law.

Moreover, to the extent the alleged discriminatory practices of the Defendant landlord determined who would occupy the housing unit, the Defendant landlord was effectively determining who would be the Plaintiff's immediate neighbors and hence, in at least one sense, the Defendant's alleged discrimination could have directly affected the Plaintiff.

No similar relationship exists here between the Plaintiffs and Defendants. The Plaintiffs were not, by their own admission, *bona fide* clients or even potential clients of Defendants. While they freely exploited Defendants' time, resources, experience and organization, they neither offered nor paid them compensation. They established no fiduciary or contractual relationship nor any course of dealing.

The Plaintiffs against whom Defendant allegedly discriminated were not neighbors of the other Plaintiffs and did not desire or propose to become neighbors. On the record, Plaintiffs were no more affected by the responses they received from Defendants than any other resident of the United States.

This was not the case in *Trafficante*.

III. The statutory design of the Fair Housing Act would be defeated by the decision of the Court below.

The purpose of the Fair Housing Act is to promote equal opportunity to buy, sell, rent and occupy housing regardless of race, creed or national origin. 42 U. S. C. § 3601. Recognizing that fair housing involves not merely practices and procedures, but also public attitudes, and realizing that free housing choice requires the involvement of all branches and of all levels of government, and aware that the distinction between some forms of illegal discrimination and responsible conduct can be difficult to establish, Congress adopted a statutory design providing a range of statutory rights and remedies carefully calculated to achieve the purpose of the Act.

Thus, having clearly identified certain enumerated practices and procedures as inconsistent with fair housing objectives, the Congress provided in Section 3612 for those injured by such practices to have the option of either proceeding directly to court or utilizing the conciliation procedures authorized under Section 3610.

Congress, however, also realized that there might be other practices and procedures which it could not precisely define which nevertheless might adversely affect the attainment of fair housing objectives. In an effort to reach such activities without, at the same time, inhibiting legitimate real estate transactions, the Congress provided in Section 3610 that alleged discriminatory housing practices, other than those specified in Sections 3603, 3604, 3605, and 3606, and enforceable under Section 3612 must be made the subject of an administrative proceeding before the Secretary of the Department of Housing and Urban Development.

The manifest purpose of such proceeding was to afford the Secretary the opportunity to examine the practices alleged to be discriminatory, to apply the expertise and resources of the Department to such examination, and to ascertain, in the first instance, whether or not the practice involved constituted a substantive threat to fair housing.

A collateral but equally important purpose of the administrative procedure mandated by Section 3610 was to assure the involvement of state and local law enforcement officials in the correction of practices perceived as inconsistent with equal housing opportunity. To implement this latter purpose, Congress required that the Secretary of the Department of Housing and Urban Development offer state or local officials the first opportunity to correct offending practices and defer further action, except in rare cases, if such opportunity were accepted.

Completing its statutory design in support of Fair Housing, Section 3609 contemplates the establishment of programs of voluntary compliance by members of the housing industry in consultation with the Secretary of Housing and Urban Development.

The Fair Housing Act thus sought a balance between the coercion of litigation under Section 3612, the accommodation of conciliation under Section 3610, and voluntary affirmative action under Section 3609.

The issue of standing before this Court is central to the preservation of this balance.

Recognition of Plaintiff's standing to sue in this case would effectively nullify all incentive to employ the conciliation process in regard to complaints concerning practices which might be thought to adversely affect fair housing, but which have not been specifically identified in Sections 3603 through 3606 to permit suit under Section 3612. By destroying this incentive to conciliate, this Court would frustrate the Congressional goal of causing such complaints to be reviewed by the agency of the Federal government charged with the duty of administering the Fair Housing Act and possessing the greatest expertise in the proper interpretation of the Act.

The essential evil of affording direct access to the courts to those who have suffered no direct injury is that it encourages the bringing of ill-founded or specious lawsuits which could not withstand the scrutiny of the Secretary's fair housing experts.

While the Secretary's refusal to seek a resolution of a complaint does not foreclose the complainant from a range of alternative remedies, such refusal does tend to clarify the vulnerability of the defendant and hence limit his susceptibility to an unwarranted settlement coerced by the prospect of protracted litigation and uncertain outcome.

Similarly, if Section 3610 is nullified by this Court, the affirmative action objectives of Section 3609 will also suffer. The interrelationship between the Secretary's conciliation function and its administration of voluntary compliance programs is direct and intimate. The problems and issues observed by the Secretary in individual conciliation proceedings have historically been translated into voluntary compliance programs designed to prevent such problems and issues from arising in the future. At the same time, voluntary compliance programs have not only expedited and strengthened conciliation activities by providing information concerning their existence and utilization, but also have led to the development of supplemental conciliation arrange-

ments designed to prevent the further escalation of controversies into judicial confrontations.*

The Congress in adopting the Fair Housing Act recognized, full well, that they were undertaking to change attitudes of public behavior engrained for hundreds of years. They also recognized that the powers created to effect this change were so great as to cause serious injury if abused.

This is why the Congress arranged the powers it created so as to encourage conciliation and affirmative action rather than litigation.

This Court should respect the arrangement of powers contemplated by Congress. The decision of the Court of Appeals for the Ninth Circuit in *Topic v. Circle Realty*, 532 F. 2d 1273 (9th Cir., 1976) is particularly instructive in this regard. The impatience of the Bellwood Court with what it deems to be the "toothless nature" of the conciliation procedure contemplated by Section 3610, *Bellwood*, 569 F. 2d at 1020, does not justify the usurpation or dilution of the civil rights enforcement powers of the Secretary. Should Plaintiffs conclude that the civil rights authorities cannot do the job assigned them by Congress, their remedy is the ballot box rather than a request to this Court to "take over."

IV. The necessary nexus for standing does not exist between the status asserted by Plaintiffs and their claim.

This Court has held that it is both appropriate and necessary to inquire "... into the nexus between the status asserted by the litigant and the claim he presents ..." *Flast v. Cohen*, 392 U. S. 83, 102 (1967). The purpose of such inquiry is to determine whether or not the Plaintiff satisfies the "injury in fact" test established by this Court.

* Under the Affirmative Marketing Agreement between HUD and the NATIONAL ASSOCIATION OF REALTORS®, provision is made for the establishment of Community Housing Resources Boards to develop solutions to fair housing problems encountered.

The claim asserted by Plaintiffs here is clear; they assert that Defendants' conduct has denied them the social and professional benefits of living in an integrated society. The status in which they assert this claim is likewise clear—it is as citizens having an interest in living in an integrated society.

Plaintiffs do not assert that they have been denied equal housing opportunity or foreclosed from living where they desire to live. Nor could they since they have admitted that they were not *bona fide* homebuyers. *Appendix III*.

Nor do Plaintiffs assert their status derives from their employment as "testers," although all of the allegations of the complaint were admittedly developed through such employment. Nor could they assert such status since the Court below expressly refused to recognize that "testers *qua* testers have a cause of action." *Bellwood*, 569 F. 2d at 1016.

Assuming, *arguendo*, that the right to live in an integrated society is a "cognizable interest," there is no "nexus" between the purpose of the Fair Housing Act which is to guarantee equal access to housing opportunities and a class of litigants who may have an interest in an "integrated society" since a guarantee of such "opportunities" is not a guarantee of such a "society." Thus, under the *Flast* analysis, it is clear that these plaintiffs lack standing to sue under the Act.

Further, if Plaintiffs' status is nothing more than that of a citizen having an interest in living in an integrated society, then their claim of standing must additionally fail on the authority of this Court's decision in *Sierra Club v. Morton*, 405 U. S. 727 (1972). That decision, rendered just months before the *Trafficante* decision of this Court upon which the Court below based its opinion, is particularly relevant and, we submit, should be controlling here.

In the *Sierra Club* case, the Court held that the Sierra Club had no standing to sue the United States Department of Interior and private developers in order to vindicate their members' "special interest" in preserving certain lands as wilderness areas.

In denying standing to the Sierra Club, this Court noted that "... 'the injury in fact test' requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured. . . ." *Id.* at 735. The Court found that a "mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' . . ." so as to warrant standing to sue. *Id.* at 739.

The Court went on to say that:

"... if a 'special interest' in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization, however small or short lived. And if any group with a bona fide 'special interest' could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so. *Id.* at 739-740.

While this Court recognized in the *Sierra Club* case that "aesthetic and environmental well being, like economic well being," were cognizable interests "... deserving of legal protection through the judicial process," *Id.* at 734, it denied standing to the Club because it failed to demonstrate the existence of "injury in fact."

Similarly here, while this Court may recognize that an interest in "the social and professional benefits of living in an integrated society" are cognizable interests deserving of legal protection through the judicial process, Plaintiffs' demand for standing must nonetheless fail because they are not among those "injured in fact." The alleged conduct of Defendants was induced by a testing program designed not for the purpose of actually exercising rights protected by the Fair Housing Act, but rather as an experiment to determine whether such rights might be exercised in hypothetical situations.

Aside from the fact that this Court has traditionally denied standing when the case the Plaintiff seeks to bring is of a "hypothetical or abstract character . . ." *Aetna Life Insurance Co. v. Haworth*, 300 U. S. 227, 240 (1937), the results of an experiment can never constitute the "injury in fact" required to justify standing.

Nor can this Court's *Sierra Club* decision be distinguished on the theory that the Sierra Club was asserting injury to an "organizational interest" whereas Plaintiffs here assert injury to a "personal interest." This Court disposed of that theory by its recognition that "... an organization whose members are injured may represent those members in a proceeding for judicial review." *Sierra Club*, 405 U. S. at 739. It is not "interest" but "injury" which is critical.

But if, as the Court below suggests, the injury Plaintiffs allege results from the general denial of the "benefits of living in an integrated society," it would follow that Plaintiffs can claim no greater injury than any other member of Society. Thus, if such injury is to be recognized as a basis of standing, then every member of society would have standing equal to Plaintiffs to initiate suit for the same alleged conduct of Defendants about which Plaintiffs complain.

Clearly, the extension of standing to everyone in society merely on the basis of their interest in living in an integrated society would impose impossible burdens on the judicial system and expose real estate practitioners to intolerable harassment. It would fail "to assure that concrete adverseness which shapes the presentation of issues upon which the Court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U. S. 186, 204 (1962). It would fail its purpose "... to put the decision as to whether review will be sought in the hands of those who have a direct stake at the outcome." *Sierra Club*, 405 U. S. at 740. It would invite and incite self-generated injury designed specifically to produce a lawsuit.

Moreover, the extension of standing to everyone in society, as required implicitly by the decision of the Court below would create a class of litigation substantially incapable of administration or settlement. Thus, if the injury sued upon results from the general denial of the "benefits of living in an integrated society" it would follow that unless the Plaintiff sues on behalf of "all members of society," a decision or settlement involving the Plaintiff would not foreclose any other person "in society" from bringing suit for damages, if not for injunctive relief, for the same alleged offense. At the same time, the usual requirement that notice of a settlement be given to all members of a class would make the cost of the settlement of a class action on behalf of all members of society prohibitive.

CONCLUSION.

The Fair Housing Act aims to provide, within constitutional limitations, for fair housing throughout the United States. 42 U. S. C. § 3601. It does not propose to establish an integrated society or to guarantee any person's right to live in such society. The Act prohibits practices and conduct which deny equal housing opportunity and choice, but nowhere does the Act seek to control how the freedom of housing choice it guarantees will be exercised.

The Act does not mandate quotas but choice; it does not require the assimilation of different groups into one homogenous whole but rather requires the incorporation of individuals of different groups into society *as equals*.

Standing to sue under the Fair Housing Act should be determined not in terms of a claim of right Congress has not created and the Constitution has not guaranteed. Nor should it be determined on the basis of a case or controversy arising from a theoretical transaction.

For these reasons, Amicus respectfully submits that this Honorable Court should reverse the judgment of the Court of Appeals.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

Supreme Court, U. S.

FILED

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No. 77-1493

GLADSTONE REALTORS, *et al.*,
vs. *Petitioners,*

VILLAGE OF BELLWOOD, *et al.*

ROBERT A. HINTZE REALTORS, *et al.*,
vs. *Petitioners,*

VILLAGE OF BELLWOOD, *et al.*

On Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

BRIEF FOR THE LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE*

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IN THE
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BRIEF FOR THE LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE*

Interest of *Amicus Curiae* *

The Lawyers' Committee for Civil Rights Under Law was organized in 1963 at the request of the President of the United States to involve private attorneys throughout the country in the national effort to assure civil rights to

* The parties' letters of consent to the filing of this brief are being filed with the clerk pursuant to Rule 42(2).

all Americans. The Committee's membership today includes former Attorneys General, past Presidents of the American Bar Association, former Solicitors General, a number of law school deans, and many of the nation's leading lawyers. Through its national office in Washington, D.C., and its offices in Jackson, Mississippi and eight other cities, the Lawyers' Committee over the past fifteen years has enlisted the services of over a thousand members of the private bar in addressing the legal problems of minorities and the poor in voting, education, employment, housing, municipal services, the administration of justice, and law enforcement.

The Lawyers' Committee and its local committees, affiliates, and volunteer lawyers have been actively engaged in providing legal representation to those seeking relief under federal civil rights legislation. That litigation includes cases raising housing discrimination issues similar to those presented here. Our interest in this case, however, involves the most basic concern of the Lawyers' Committee: the right of Americans to have their claims for civil rights adjudicated on the merits in federal court.

The instant case is a challenge under the Fair Housing Act of 1968 to discriminatory action based on race: the alleged limitation or exclusion of minority-race citizens from residence in a community by the action of realtors and real estate salesmen. The court of appeals has held, correctly in our view, that those who are indirectly affected and injured by such discrimination, as well as its most immediate and direct objects, have "standing" in the federal courts to present the challenge. Petitioners urge, however, that this Court pronounce a far narrower rule limiting effectuation of the rights established by the Congress to only those persons having a fully matured intention and ability to purchase realty at the time discriminatory acts directed toward them individually take place. A limitation of this sort would cripple our efforts, and

those of others, to open to minority Americans housing opportunities which until now have been closed to them because of their race.

Such a ruling would be inimical to the congressional purposes and national policy underlying most, if not all, of the substantive and jurisdictional civil rights legislation, including in particular the 1968 Fair Housing Act. The approach to standing under that statute urged by petitioners, and adopted by the Ninth Circuit in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), cannot be harmonized with the statutory language, the legislative history, or this Court's past rulings. Because *amicus* believes that a civil rights statute should be given "a sweep as broad as its language" and that the federal courts "are not at liberty to seek ingenious analytical instruments"¹ for evading congressionally mandated civil rights jurisdiction, we have a vital interest in this case which is broader than that of the immediate litigants. The Lawyers' Committee therefore files this brief as friend of the Court urging affirmance, but addresses only the critical standing issues under the Fair Housing Act.

Statement

The relevant facts are not in dispute. Individual respondents, six residents of Bellwood and one resident of adjacent Maywood, Illinois, visited petitioners' real estate sales offices in 1975 to inquire about available housing in the area. On these visits, black and white individuals or couples represented themselves to have similar interests and desires with respect to size, quality and location of housing. Respondents found that they were treated differently, and shown housing in different areas, depending upon the color of their skin. Joined by the Village of Bellwood and the Leadership Council for Metropolitan

¹ *Jones v. Mayer Co.*, 392 U.S. 409, 437 (1968).

Open Communities, the individual respondents then filed suits under the Fair Housing Act of 1968, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3612, and the Civil Rights Act of 1866, 42 U.S.C. § 1982.

The district court dismissed the actions on the ground that all plaintiffs lacked standing, although it indicated that at least the individual respondents would have had standing under § 810 of the Fair Housing Act, 42 U.S.C. § 3610, had they filed administrative complaints with the Department of Housing and Urban Development (HUD) before commencing suit. On appeal, the Seventh Circuit reversed as to the individual respondents and the Village of Bellwood.

Summary of Argument

Since, as established below, the individual respondents have an enforceable right under the Fair Housing Act of 1968 to reside in an integrated community whose housing market is open to persons without regard to race, they have standing under Article III to attack discriminatory practices which directly affect this right under *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972), even though they themselves were not excluded from such communities or were not members of the racial group which was subjected to the discriminatory practices.

Moreover, because the petitioners' alleged racial steering denied the individual respondents other rights guaranteed them by the Fair Housing Act—the right to equal treatment by realtors without regard to race or color—there is an independent ground for standing under Article III which does not implicate the “prudential” standing rules restricting litigation of third-party rights.

The Fair Housing Act affords *all* persons the right to equal treatment by realtors without regard to race or color in 42 U.S.C. § 3604(a), which prohibits racial discrimination in negotiating for the sale or rental of hous-

ing or “otherwise mak[ing] unavailable or deny[ing]” such housing. Thus, respondents, even though they are not bona fide offerors, have standing to contest direct injuries *sustained by them* when racial steering precludes negotiation for and “otherwise makes unavailable or denies” housing because of race or color. The statutory language itself, its history and relevant case law establish that respondents' reading of the critical language is correct.

The 1968 Fair Housing Act, as interpreted by this Court in *Trafficante, supra*, establishes respondents' right to live in an integrated society. Petitioners' suggestion that this right is geographically limited to a single apartment complex cannot withstand reasoned analysis. Thus, the court of appeals' ruling sustaining respondents' standing to sue on this basis was correct.

The Village of Bellwood, too, has standing on several different grounds. First, as recognized by the court of appeals, the petitioners' alleged racial steering causes injury to the Village's resources and tax base. Second, it is a “person aggrieved” by discriminatory practices which the Fair Housing Act outlaws. Third, at least with respect to injunctive relief, the Village has a form of *parens patriae* standing to end conditions which injure its citizens.

ARGUMENT

Introduction

Petitioners here urge on both statutory and constitutional grounds that the district court correctly dismissed these actions. They agree with the construction of the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.*, first enunciated in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976). That interpretation would strictly limit the right to sue under § 3612 to those parties against whom discriminatory acts are

primarily directed—*i.e.*, to minority persons who are prevented from buying or leasing housing—while recognizing a broader right to sue under § 3610 (including others affected by discriminatory devices) following filing of complaints with HUD. Since these actions were originally commenced by respondents under § 3612 without following the administrative route, that construction of the statute would be dispositive.

However, petitioners also argue that whatever the correct interpretation of the statute, respondents are without standing to sue under Article III of the Constitution. We demonstrate first, therefore, that the respondents have alleged personal, direct injury resulting from petitioners' conduct sufficient to show the existence of a "case or controversy" within the federal judicial power; and second, that the Fair Housing Act authorizes them to sue for redress without exhausting the Act's alternative administrative remedy.

I

Individual Respondents Have Standing To Sue To Enforce Their Rights To Nondiscriminatory Access To The Housing Market And To An Integrated Community Within Which To Live

The individual respondents in these cases have suffered² two quite distinct injuries as a result of petitioners' conduct, either of which is sufficient to confer Article III standing.³ As persons who sought access to the housing market, they were injured by the actions of the

² The district court in these cases granted motions for summary judgment on the basis of a lack of standing. Under the circumstances, the allegations of the complaints must be taken as true. *E.g.*, *Jenkins v. McKeithen*, 395 U.S. 411 (1969).

³ We deal in Argument III, *infra*, with the question whether the Congress intended that judicial redress of these injuries be available under 42 U.S.C. § 3612 without resort to the administrative complaint process of HUD, *see* 42 U.S.C. § 3610.

petitioners which directly restricted their access on grounds of race or color. As citizens of Bellwood and its environs, they were injured because petitioners' actions directly impeded their right to live in an integrated community (in which the housing market is open to all without limitation on the basis of race or color).

A. Respondents' Allegations Of Direct Injury Flowing From Petitioners' Conduct Distinguish These Cases From Recent Decisions Of This Court In Which A Lack Of Standing To Sue Was Found

This case raises the question not reached in *Warth v. Seldin*, 422 U.S. 490, 513 n.21, 514 (1975)—the extent to which the Fair Housing Act of 1968, by creating an enforceable right to reside in communities to which access is not limited by racial discrimination, permits suits to eliminate discriminatory practices to be brought by individuals who either were not themselves excluded from such communities, or who are not members of the minority groups sought to be excluded.⁴ In *Trafficante v. Metropolitan Life Ins. Co.*, *supra*, this Court recognized that the Act expanded "standing" to its constitutional limits and permitted such suits, at least by residents of the same apartment complex in which discrimination was alleged to have taken place. Whether residents of the same city or metropolitan area alleged to be affected by discrimination also have standing was not decided in *Warth* because plaintiffs in that case made no claim under the 1968 Act. 422 U.S. at 514. Hence the issue is one of first impression here.

⁴ The court of appeals viewed the Act as authorizing such suits and declared that respondents had standing on this ground. It relied on *Trafficante*, *see text supra*, in holding that prudential standing limitations did not bar respondents from litigating to enforce the rights of those whom petitioners allegedly sought to bar from residence in Bellwood because of their race or color.

The individual respondents also have standing by virtue of their allegations that petitioners denied them *other* rights guaranteed by the Fair Housing Act. See § I-B *infra*. In our view, these allegations do not implicate the “prudential” standing rules restricting litigation of third-party rights⁵ and they distinguish this case from *Warth* and other recent decisions of this Court in which various plaintiffs were found to lack standing to sue in federal court.⁶

Unlike the plaintiffs in *Warth* (who had no direct contact with defendant Town of Penfield officials⁷ whose actions allegedly impinged on plaintiffs’ claimed right to live in Penfield and on intervenors’ claimed right to build low- and moderate-income housing in the Town), individual respondents in these cases went to the petitioners’ offices to seek housing. Their claims of discrimination are based on experiences *personal to them*, not upon the presumed effect of petitioners’ conduct toward others.⁸ Thus,

⁵ See note 5 *supra*.

⁶ *Amicus* primarily argues respondents’ standing on this ground (see § I-B *infra*), which involves recognition of important interests secured by the Fair Housing Act but not perceived by the courts below or by the Ninth Circuit in *TOPIC*, *supra*. Compare *Grant v. Smith*, 574 F.2d 252 (5th Cir. 1978) (*per curiam*). Contrary to the suggestion in Petitioners’ Brief at 41 n.15, respondents have never conceded that they suffered no injury by virtue of denial of their “right to select housing without regard to race.” Their only admission was that they did not intend to make *bona fide* offers to purchase. Compare Petition for Writ of Certiorari, Appendix at 2 n.1 (opinion of district court). *Amicus* also supports the rationale of the court of appeals. See § I-C and Argument II *infra*.

⁷ The exception was the Penfield Better Homes Corporation, but this Court found the allegations of the complaint and supporting papers insufficient to demonstrate a current, live controversy between that member of the Housing Council and the Town. 422 U.S. at 517.

⁸ It is doubtless true that in order to make out a case on the merits, and to justify particular relief, respondents are likely to ask the district court to draw inferences from their personal ex-

this matter involves neither an indirect form of discrimination nor the possibility that the discrimination will continue even if the practices which respondents’ suits attack are changed. In *Warth*, the plaintiffs’ allegations

suggest[ed] . . . that their inability to reside in Penfield is the consequence of economics of the area housing market, rather than of respondents’ assertedly illegal acts.

422 U.S. at 506. Here, on the contrary, the allegation is that petitioners engage in racial steering of prospective home buyers in and around Bellwood in violation of federal law, that they practiced such steering directly upon respondents when respondents visited their offices, and that such steering violates respondents’ right to live in communities to which access is not limited by racially discriminatory practices. Clearly, if respondents succeed in this litigation, judicial relief will end such conduct toward them by petitioners.

The personal involvement of the individual respondents with petitioners also distinguishes this case from *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). There it was alleged that defendants’ actions encouraged *others* to make decisions about the provision of free medical care which directly affected plaintiffs. See 426 U.S. at 42-44. Here, petitioners’ racial steering was aimed at the respondents personally (when they visited petitioners’ offices) and directly affected the communities in which respondents reside.⁹

periences—such as the inference that the racial steering to which they were allegedly subjected is typical of petitioners’ practices. But that does not detract from respondents’ personal involvement with the agents of the alleged discrimination, an involvement which this Court found missing in *Warth*.

⁹ *Simon* is also different from this case because it involves a challenge to the tax liability of another. See 426 U.S. at 46 (Stewart, J., concurring). See also, *Linda R.S. v. Richard D.*, 410 U.S. 614, 617-18 (1973) (“ . . . in the unique context of a challenge to a

Petitioners suggest also that the respondents lack standing because they alleged only a "generalized" or "abstract" injury. *E.g.*, Brief for Petitioners at 43-44. In one sense, this is an argument that the rights guaranteed by the statute do not extend beyond residents of the same apartment house to residents of the same municipality or metropolitan area, *see id.* at 50-51, and is addressed in Argument III, *infra*. In another sense, however, it represents a misapplication of the principles enunciated by this Court in *Schlesinger v. Reservists to Stop the War*, 418 U.S. 208 (1974), and other cases.¹⁰ Those rulings establish that individuals who can allege no injury greater than that suffered by all other citizens as the result of governmental action lack standing to challenge the action in federal court. But an injury is not so generalized as to be without the scope of Article III simply because it is suffered by a large number of individuals. *United States v. SCRAP*, 412 U.S. 669, 687-88 (1973). The fact that all residents of Bellwood and neighboring communities are denied the rights guaranteed them by the Fair Housing Act when realtors who sell homes in Bellwood practice racial steering in no sense reduces or eliminates the injury suffered by each resident because of such practices. *Id.*, 412 U.S. at 687.

We thus turn to the statute under which respondents filed suit. For it is clear, as demonstrated above, that if the Fair Housing Act by its terms creates the substantive rights which respondents here claim, petitioners' actions have invaded those rights, and caused injury to respondents.¹¹ *Warth v. Seldin*, *supra*, 422 U.S. at 514.

criminal statute, appellant has failed to allege a sufficient nexus between her injury and the government action which she attacks to justify judicial intervention").

¹⁰ *E.g.*, *O'Shea v. Littleton*, 414 U.S. 488 (1974); *United States v. Richardson*, 418 U.S. 166 (1974).

¹¹ Of course, statutes cannot remove the Article III requirement of an actual case or controversy. But these suits are brought by

B. The Individual Respondents Have Standing To Prosecute These Actions Because The Fair Housing Act Affords All Persons The Right To Equal Treatment By Realtors Without Discrimination On The Basis Of Race Or Color

In their complaint, the individual respondents asserted that the alleged racial steering to which they were subjected by petitioners denied "their right to select housing without regard to race." *Village of Bellwood v. Gladstone Realtors*, 569 F.2d 1013, 1015 (7th Cir.), *cert. granted*, 46 U.S.L.W. 3765 (June 12, 1978). This claim was rejected by the district court, and as well by the court of appeals, which sustained individual respondents' standing on the ground discussed in § I-C, below. These views are, we submit, in error.

In *Trafficante v. Metropolitan Life Ins. Co.*, *supra*, 409 U.S. at 211, this Court agreed with then Senator Mondale's statement that the Fair Housing Act of 1968 was intended "to replace the ghettos 'by truly integrated and balanced living patterns.' 114 Cong. Rec. 3422." Consistent with this characterization, the statute identifies expansively the discriminatory practices which it is intended to outlaw. 42 U.S.C. § 3604(a) makes it unlawful

To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a

plaintiffs whose personal involvement with the defendants satisfies that requirement and makes judicial determination of their claims possible. The policy behind the Article III requirement which resulted in dismissal in *Warth* and *Simon* requires that federal courts decide legal issues only in suits brought by parties who can show how those issues arise in concrete factual settings. To satisfy the standing requirement, the parties must, at the least, allege their ability to make such a presentation based on first-hand knowledge and experience (personal injury). Compare *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972) with *United States v. SCRAP*, *supra*, 412 U.S. at 685. This prerequisite was met by the plaintiffs in the instant cases.

dwelling to any person because of race, color, religion or national origin.

(emphasis supplied). The italicized terms are very broad indeed. The "refusal to negotiate" language is independent of the limiting words, "after the making of a bona fide offer,"¹² which appear in the first phrase. Thus, reasoning from the very structure of the section, we believe that the court of appeals erred in concluding that

... plaintiffs' discovery admissions that no bona fide homeseekers are in the case negated the complaints' allegations that personal rights "to select housing without regard to race" are implicated here

569 F.2d at 1015. The statute confers on individuals the right to participate in negotiations for the sale or rental of property free from racial discrimination whether or not they have a *bona fide* intention to follow through with actual lease or purchase. The practice of racial steering constitutes a self-imposed limitation (on the ground of race or color) of a realtor's willingness to negotiate.¹³

¹² One court has suggested that it is these words which have prompted decisions holding that "testers" have no standing. *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 898 n.4 (3d Cir. 1977).

¹³ Racial steering practices uniformly have been held to be within the coverage of the Act, though generally on the theory that they are included within § 3064(a)'s catchall phrase, "otherwise make unavailable or deny." *E.g.*, *Zuch v. Hussey*, 394 F. Supp. 1028, 1047 (E.D. Mich. 1975), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1977) (*per curiam*); *Fair Housing Council v. Eastern Bergen County MLS*, 422 F. Supp. 1071 (D.N.J. 1976); *United States v. Real Estate One, Inc.*, 433 F. Supp. 1140 (E.D. Mich. 1977). *Cf. Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975). As Judge Stern said in *Fair Housing Council*, *supra*, 422 F. Supp. at 1075-76:

The real estate broker and the multiple listing service are crucial intermediaries between buyers and sellers of residential real estate. The complaint fairly pleads that the influence of these intermediaries extends far beyond any one meeting of the minds between an individual purchaser and an individual seller.

The three phrases of § 3604(a) are in the disjunctive; each applies "to any person" but only the first is restricted by the language, "after the making of a bona fide offer." Thus, construing § 3604(a) broadly to effectuate the Congressional purpose "to provide, within constitutional limitations, for fair housing throughout the United States," 42 U.S.C. § 3601, the ban on racial steering extends to "testers" and other individuals who may not, at any given moment, be planning to make *bona fide* offers for the purchase or lease of particular property.

This reading of the statutory language is confirmed by the legislative history. Title VIII of the 1968 Civil Rights Act did not appear in the original House of Representatives version. It was added by an amendment on the Senate floor introduced by Senator Dirksen. 114 CONG. REC. 4570 (February 28, 1968). However, § 204(a) in Senator Dirksen's amendment omitted the language in question and would have made it a discriminatory practice

To refuse to sell or rent, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

114 CONG. REC. 4571 (February 28, 1968). The words "after the making of a bona fide offer or" were added subsequently, as the result of an amendment suggested by Senator Allott and accepted by the bill's Floor Manager, Senator Mondale. 114 CONG. REC. 5515-16 (March 6, 1968).

When his amendment was brought up for discussion (cloture having been invoked on the bill), Senator Allott was very specific about its reach and effect. He stated that it

... applies to sale or rental—the first four words only of line 7.

It will be noted that the latter part of paragraph (a) is not conditioned upon a bona fide offer, because the

amendment as offered concludes with the word "or" rather than "and."

114 CONG. REC. 5515 (Mar. 6, 1968). On this basis, the amendment was accepted by Senator Mondale and incorporated into the bill. *Id.* at 5516-17.¹⁴

In addition, 42 U.S.C. § 3604(b) prohibits discrimination because of race or color

against any person *in the terms, conditions of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith . . .*

(emphasis supplied). Just as requiring more onerous application procedures for blacks can be viewed as discrimination in the terms or conditions of sale or rental, *cf. United States v. Youritan Constr. Co.*, 370 F. Supp. 643, 648 (N.D. Cal. 1973), *modified as to relief and aff'd*, 509 F.2d 623 (9th Cir. 1975) (holding such conduct to be within "otherwise make unavailable or deny" language of § 3604(a)), so may racial steering practices be interpreted to be within the prohibitions of this subsection, which bars these prohibited practices from being applied to "any person."

¹⁴ There was no discussion of this language in the House, which passed the Senate version of the bill without change. Ironically, petitioners' extended discussion of the statutory history of the "bona fide offer" language of § 204(a) in Brief for Petitioner at 31-33 underscores the position of Amicus: only with respect to allegations that an owner or lessor "refuse[d] to sell or rent" must a bona fide offer be shown. Senators Allott, Mondale and Cooper were sensitive to potential harassment of real estate owners and lessors "when the person *offering to rent or to buy* had no intention of renting or buying." Remarks of Sen. Cooper, quoted in Brief for Petitioner at 33. Where, as here, a violation of the statutory prohibition against "*refus[ing] to negotiate*" or "*otherwise mak[ing] unavailable or deny[ing]*" housing is alleged, the statute reasonably does not require a bona fide offer since, of course, there is seldom occasion for an offer when the other party "*refuse[s] to negotiate*" or "*otherwise make[s] unavailable or den[ies]*" housing on the basis of race. Similarly, an offer would be unlikely if there are illegal false representations that a "dwelling is not available for inspection, sale or rental".

Finally, § 3604(d) makes it illegal

To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

Racial steering constitutes an implicit, if not a verbal, representation about the availability of housing. Hence it can be considered within the reach of this subsection. Compare *United States v. Hunter*, 459 F.2d 205, 215 (4th Cir.), *cert. denied*, 409 U.S. 934 (1972) (implicitly discriminatory advertising; § 3604(c)); *United States v. Real Estate One, Inc.*, *supra* n.13 (racial steering effect of assignment of black and white employees by realty firm).

Thus, we submit, the Fair Housing Act creates substantive rights of nondiscriminatory access to the housing market in favor of *any person*, not just persons who make "bona fide offers" to purchase or lease property. The issue here presented was recently determined by the Court of Appeals for the Fifth Circuit in *Grant v. Smith*, 574 F.2d 252, 255 (1978) (*per curiam*), where the Court said:

Both section 1981 and section 1982, as they apply here, relate to protection of minority rights to contract for, to purchase, and to lease real property. In a similar vein, section 3604(b) protects the right to buy or rent without racial distinctions. The plaintiffs' good faith or lack of it would be pertinent to the claims asserted under these statutory provisions. The same is not true, however, as to the claims asserted under sections 3604(a) and (d) which prohibit the refusal to negotiate about or allow inspection of a dwelling because of race. *Both negotiation and inspection involve aspects of real estate dealing which often precede the formation of any intent to buy or rent on the part of a prospective customer. To require a bona fide offer in such circumstances*

could render these protective provisions of section 3604 meaningless. [emphasis supplied]

The rights protected under the Fair Housing Act may be enforced by individuals whose attempts to exercise them are motivated by a desire to "test" compliance with the law, as well as by individuals with diverse other motivations. This Court has never questioned the standing of "testers." In *Evers v. Dwyer*, 358 U.S. 202, 203 (1958), the district court had dismissed a challenge to Tennessee's mandatory public transportation segregation law because the plaintiff "had ridden a bus in Memphis on only one occasion and had 'boarded the bus for the purpose of instituting this litigation.'" Reversing unanimously, this Court said (*id.* at 204):

We do not believe that appellant, in order to demonstrate the existence of an "actual controversy" over the validity of the statute here challenged, was bound to continue to ride the Memphis buses at the risk of arrest if he refused to seat himself in the space in such vehicles assigned to colored passengers. A resident of a municipality who cannot use transportation facilities therein without being subjected by statute to special disabilities necessarily has, we think, a substantial, immediate, and real interest in the validity of the statute which imposes the disability. See *Gayle v. Browder*, 352 U.S. 903, affirming the decision of a three-judge District Court (Ala.) reported at 142 F. Supp. 707. That the appellant may have boarded this particular bus for the purpose of instituting this litigation is not significant. See *Young v. Higbee Co.*, 324 U.S. 204, 214; *Doremus v. Board of Education*, 342 U.S. 429, 434, 435.

The same principle was applied in *Pierson v. Ray*, 386 U.S. 547, 558 (1967), where the Court said of out-of-state demonstrators:

The petitioners had the right to use the waiting room of the Jackson bus terminal, and their deliberate

exercise of that right in a peaceful, orderly, and inoffensive manner does not disqualify them from seeking damages under § 1983.

Accord, Smith v. YMCA of Montgomery, 462 F.2d 634, 645-46 (5th Cir. 1972); *Meyers v. Pennypack Woods Home Ownership Ass'n*, *supra* n.12, 559 F.2d at 898.

Furthermore, the doctrine that "bona fide intention to lease or purchase" is a necessary element of an individual's standing to challenge racial steering practices which violate the Fair Housing Act, is simply unworkable. It invites useless expenditure of time, energy and resources on factual questions which have little relationship to the purposes of the Act, in order to determine the subjective intentions of plaintiffs. In these cases, for example, petitioners' discovery focused on the individual respondents' motivations rather than on the issue of discrimination. The distinction also is overbroad and invites the sort of niggardly interpretation of remedial statutes which the Court has refused to countenance. See, e.g., *Trafficante v. Metropolitan Life Ins. Co.*, *supra*; *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969). If respondents cannot sue to redress steering because they did not intend actually to purchase, what of couples lacking positive resolve to relocate who may spend a Sunday afternoon looking at available housing with real estate agents? If shown property sufficiently attractive to them, an intention to purchase might rapidly mature. Cf. *Ehlert v. United States*, 402 U.S. 99, 103-04 (1971) (late crystallization of conscientious objection); *Clay v. United States*, 403 U.S. 698, 702 (1971), *id.* at 710 (Harlan, J., concurring in the result) (same); *Welsh v. United States*, 398 U.S. 333, 336 (1970) (opinion of Black, J.) (same).

That these dangers are not entirely speculative is illustrated by the recent case of *Meyers v. Pennypack Woods Home Ownership Ass'n*, *supra* n.12. In that action brought under both the Fair Housing Act and 42 U.S.C.

§ 1982, the district court *inferred*, from the fact of the plaintiffs' residence, that he was "a 'tester' rather than a bona fide applicant for Pennypack housing," 559 F.2d at 897, and denied relief. The court of appeals interpreted this as a dismissal for lack of standing, *id.* at 898, and reversed.¹⁵ Although the Third Circuit found it unnecessary to review the lower court's "finding of fact" on the subject, the history of the case suggests the mischief which results from the "bona fide intention" doctrine.¹⁶

C. The Individual Respondents Have Standing Because Petitioners' Discriminatory Practices Interfere With Their Right To Live In Integrated Communities

The court of appeals held that these suits should have been permitted to proceed to trial on the merits; that individual respondents had standing to sue to enjoin petitioners' racially discriminatory practices as residents of municipalities affected by those practices. It reasoned from the decision in *Trafficante*, *supra*, that the 1968 Fair Housing Act established respondents' right to "the social and professional benefits of living in an integrated society," a right which provided respondents with standing to challenge petitioners' racial steering of potential home buyers in the towns where respondents lived.¹⁷ This

¹⁵ Because the court of appeals concluded that plaintiff's Fair Housing Act claim was time-barred, 559 F.2d at 899, its holding with respect to standing applies technically only to the claim under § 1982. However, the logic of its ruling clearly holds as well for Fair Housing Act cases.

¹⁶ It is worthy of note in this regard that some of the practices attacked by plaintiff Meyers were eventually altered, but only as the result of a consent decree in another suit under the 1968 Act commenced by the United States. *See United States v. Pennypack Woods Home Ownership Ass'n*, Civ. No. 76-2557 (E.D. Pa., November 14, 1977), EQUAL OPP. HOUS. ¶ 18,017 (P-H).

¹⁷ Six of the individual respondents are residents of Bellwood; they alleged that white potential home purchasers were steered by petitioners away from Bellwood to other suburbs or to only certain

ruling was manifestly correct and should be affirmed. While the right to enjoy the benefits of interracial associations granted by the Fair Housing Act may not be so compelling as to overcome the limitations of the First Amendment, *see Linmark Associates v. Township of Willingboro*, 431 U.S. 85, 94-95 (1977) (citing *Trafficante*), it is surely an adequate basis for respondents' standing to sue under the Act.

Petitioners argue, however, that this substantive right has a geographical limitation—that, in the words of another court,

... an apartment complex housing eight thousand two hundred tenants is, from an Article III point of view, different from a county with a population of over nine hundred thousand.

Fair Housing Council v. Eastern Bergen County MLS, *supra* n.13, 422 F. Supp. at 1080-81. We suggest that in the context of these challenges to racial steering practices, the difference does not affect the standing of the respondents.

Respondents here have much firmer standing under the Fair Housing Act than would the plaintiffs in *Warth v. Seldin*, *supra*, had they raised the statutory issue.¹⁸ That challenge to the Town of Penfield's housing ordinances involved residents (members of Metro-Act) who could have claimed that the effect of the Town's zoning scheme was to deny them the benefits of interracial associations. *See*

areas within Bellwood. *See* Brief for Respondents in Opposition, at 3-4. The other respondent resides in Maywood—a suburb of Chicago adjacent to Bellwood. The racial steering alleged obviously affects the Bellwood residents. It is equally true that such steering (even if whites are encouraged to settle in Maywood) affects the remaining respondent's right to reside in an integrated community (Maywood) free from manipulation of its real estate market on the basis of race or color.

¹⁸ *See* pp. 7-9, *supra*.

Brief *Amicus Curiae* of the Lawyers' Committee for Civil Rights Under Law, *Warth v. Seldin*, *supra*, at 16. But whether that interest of the Town's residents was affected would depend upon whether, in the absence of the zoning ordinances, minority citizens could reasonably be expected to reside in Penfield. These were precisely the sort of allegations which this Court found to be missing from the complaint, and to be fatal to the standing of the non-resident plaintiffs on the non-Title VIII claims in *Warth*. See 422 U.S. at 504-07. Here, to the contrary, the direct impact of petitioners' racial steering practices on the residential composition of Bellwood is evident: potential white home buyers who contact these firms will be prevented by petitioners' actions from even considering relocation in the Village and contributing to the preservation of its integrated character.

In *TOPIC v. Circle Realty*, *supra*, 532 F.2d at 1275, the Court suggested in *dictum* that residents of a metropolitan area lacked standing to challenge the racial steering practices of realtors under the Fair Housing Act because

[i]t is quite possible that, even absent the defendants' discriminatory practices, Carson and Torrance would still be segregated communities.

This comment misconceives the nature of the inquiry. At best, it suggests that the plaintiffs' claim to standing in that suit would have been viewed more sympathetically by the court of appeals had all, rather than merely some, realty firms operating in the Los Angeles vicinity been made defendants. But the fact that an injunction against continued steering by some realtors will not by its terms end steering by others does not weaken the actual controversy between the named realtors and those living in the areas within which steering takes place. It is entirely different from the inability of a court—through an injunction requiring alteration of regulations of the Internal

Revenue Service—to compel hospitals to increase free care, *Simon v. Eastern Kentucky Welfare Rights Organization*, *supra*, or of a court—through an injunction requiring a change in a town's zoning plan—to compel the construction by third parties of low- and moderate-income housing within that town, *Warth v. Seldin*, *supra*.

Petitioners' claim, that the connection between residential segregation in the Bellwood area and their steering practices is attenuated and speculative, is best answered, we think, by Judge Stern in *Fair Housing Council v. Eastern Bergen County MLS*, *supra*, 422 F. Supp. at 1081:

The alleged discriminatory housing practices and the effects of those practices would, if true, cause greater injury to the residents of Bergen County than the harm alluded to by the residents of the *Trafficante* housing complex. The fact that the alleged injury affects a large number of people in a large geographic area does not serve to attenuate it. On the contrary, it makes the harm more severe. Residents of an all white housing complex may need only to look to the next residential facility for the interracial associations they desire. If the allegations here are true, residents of Bergen County may have to go to an entirely different neighborhood or community. Similarly, a completely white building is less of a "ghetto" than a completely white neighborhood or community. That the *cordon sanitaire* has been drawn around an entire community rather than a single apartment complex does not render it lawful. This Court therefore holds that the residents of predominantly white neighborhoods have alleged injury in fact sufficient to confer standing to sue for violation of the Fair Housing Act, and respectfully declines to follow the contrary result suggested in *TOPIC* on appeal. The foregoing analysis applies equally with respect to residents of predominantly black neighborhoods or communities. These plaintiffs also have alleged the requisite injury in fact.

In *Trafficante*, this Court approvingly cited a decision of the Third Circuit in an employment discrimination action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, to support its conclusion that standing to sue under the 1968 Act is as broad as Article III permits. 409 U.S. at 209, citing *Hackett v. McGuire Bros.*, 445 F.2d 442 (3d Cir. 1971).¹⁹ Similarly, in this case the Court should look to Title VII decisions which have permitted claims of racial discrimination to be raised by those who are harmed indirectly by discrimination in the workplace, but are not members of the race discriminated against, *EEOC v. Bailey Co.*, 563 F.2d 439, 452-53 (6th Cir. 1977), *cert. denied*, 46 U.S.L.W. 3555 (Mar. 6, 1978); *Waters v. Heublein, Inc.*, 547 F.2d 466 (9th Cir. 1976), *cert. denied*, 433 U.S. 915 (1977), or are not direct victims of the particular form of discrimination attacked in the suit, *Gray v. Greyhound Lines, East*, 545 F.2d 169 (D.C. Cir. 1976); *Lea v. Cone Mills Corp.*, 438 F.2d 86 (4th Cir. 1971).²⁰

In the instant cases, the individual respondents are just as "aggrieved," *see Trafficante, supra*, 409 U.S. at 212 (White, J., concurring) by manipulation of the residential composition of their living environment at the hands of petitioners as were the *Trafficante* plaintiffs by such manipulation at the hands of those who managed the apartment complex in which they lived. Thus we believe the court of appeals' ruling sustaining their standing to sue on this basis was sound.

¹⁹ 42 U.S.C. § 2000e-5(b) permits a Title VII suit to be filed "by or on behalf of a person claiming to be aggrieved." The "person aggrieved" language also appears in Title VIII, 42 U.S.C. § 3610.

²⁰ Of course, the precise harm suffered by plaintiffs may affect the precise type of relief to which they are entitled. *Lea v. Cone Mills Corp.*, *supra*; *cf. International Bhd. of Teamsters v. United States*, 431 U.S. 324, 356-357 (1977). But so long as plaintiffs suffer some injury, they have standing to sue.

II

The Village Of Bellwood Has Standing To Bring This Fair Housing Act Litigation

In their complaints, respondents averred that the petitioners steered potential white home buyers to areas other than the Village of Bellwood because in recent years the black population of that suburb has increased, and also that steering of clients within the village was practiced. The Village itself joined as a plaintiff in this litigation, and its standing was recognized by the court of appeals on the basis of the injury to the Village's resources and tax base (without determining whether it would also have standing as the representative of its citizenry). 569 F.2d at 1017. *Amicus* agrees with this result, and urges this Court also to recognize the Village's standing on any or all of several grounds.

First, if we are correct in our interpretation of 42 U.S.C. § 3612, *see* Argument III *infra*, then the scope of standing under that section is as broad as that under § 3610, and extends to anyone who could file a complaint with the Secretary of HUD, *i.e.*, to any "person aggrieved" by one or more of the discriminatory practices which the Fair Housing Act outlaws. *See Trafficante v. Metropolitan Life Ins. Co.*, *supra*, 409 U.S. at 212 (White, J., concurring). Clearly, HUD would accept a complaint of racial steering filed by the Village of Bellwood. *See* 24 C.F.R. §§ 105.2(f), 105.12 (1977). And there seems no more reason to exclude governmental units from the term "person aggrieved" than there was to exclude such units from the term "person" in *Monell v. Department of Social Services*, 46 U.S.L.W. 4569 (June 6, 1978)—particularly since the word does not even appear in § 3612, but only in § 3610. Enlisting the nation's municipalities in the effort to end residential apartheid—the goal of the Fair Housing Act—can hardly be viewed as inconsistent with Congress' intent in passing the statute. *Cf. Linmark*

Associates, Inc. v. Township of Willingboro, supra, 431 U.S. at 97.

Second, at least where injunctive relief is at issue, a municipality ought to be recognized to possess a form of *parens patriae* standing to seek an end to conditions which injure its citizens, see *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972); *Georgia v. Pennsylvania R.R. Co.*, 324 U.S. 439 (1945); *Kelley v. Carr*, 442 F. Supp. 346, 356-57 (W.D. Mich. 1977); *Burch v. Goodyear Tire & Rubber Co.*, 420 F. Supp. 82, 85-90 (D. Md. 1976), *aff'd* 554 F.2d 633 (4th Cir. 1977) (injury to general economy of state); *Maine v. M/V Tamano*, 357 F. Supp. 1097 (D. Me. 1973), similar to its standing to bring suit to enjoin a public nuisance, e.g., *City of Louisville v. National Carbide Corp.*, 81 F. Supp. 177 (W.D. Ky. 1948).

Third, the Court of Appeals was plainly correct in its view that the racial steering allegedly practiced by petitioners causes real, tangible harm to governmental entities such as the Village of Bellwood. Although they are creatures of the States, and can in general exercise only such powers as are specifically delegated to them, municipalities are formed to further specific societal goals, to provide services and protection to their citizenry, and to administer responsibilities delegated to or imposed upon them by the States. Cf. *National League of Cities v. Usery*, 426 U.S. 833 (1976). Panic selling, manipulation of the housing market, and the decline in real estate values which can and often does accompany racial steering constitutes a serious threat to these vital interests of municipalities sufficient to afford them standing under the Fair Housing Act to seek elimination of such discriminatory practices.

On any or all of these grounds, the judgment below should be affirmed with respect to the Village of Bellwood.

III

Respondents May Bring Suit Under 42 U.S.C. § 3612 Without Exhausting Administrative Remedies As Required Under § 3610

Petitioners here, and the Ninth Circuit in *TOPIC v. Circle Realty, supra*, have constructed an interesting and superficially appealing argument which distinguishes between those persons who may bring Fair Housing Act suits under 42 U.S.C. §§ 3610 and 3612, respectively. The difficulty with that argument, however, is that it is flatly inconsistent with the statutory language and lacks the support of even a minute shred of legislative history.

As this Court detailed in *Trafficante, supra*, § 3610 establishes an administrative remedy commenced by the filing of a complaint with HUD. 409 U.S. at 208. It also allows the complaining party to bring a civil action if the complaint is not administratively resolved within 30 days. *Id.* at 207 n.4, 209. In *Trafficante* HUD had accepted, but was unable to resolve within 30 days, a complaint filed by residents of the Parkmerced apartment complex who alleged that they were denied the benefits of interracial associations because of racial discrimination practiced by the management of the complex. *Id.* at 207-08. This Court held that these § 3610 complainants had standing to file suit to enforce the Fair Housing Act. The Court did not explicitly address § 3612, the *Trafficante* plaintiff's other claimed jurisdictional base. *Id.* at 212.

This omission led the Ninth Circuit in *TOPIC* to construct a novel distinction between § 3610 and 3612. The latter states simply:

The rights granted by section 803, 804, 805, and 806 [§§ 3603, 3604, 3605, and 3606] may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. . . .

Notably, there is no language restricting access to the judicial process to enforce the provisions of the Act. Yet the history of the 1968 legislation demonstrates that when Congress desired to construct such limitations, it did so explicitly. See pp. 13-14, *supra* (amendment of Sen. Allott). Moreover, as we have explicated at some length above (§ I-B, pp. 11-18), § 804 of the Act (42 U.S.C. § 3604) is broad in its coverage and protects the rights of *any person*; only the right to consummate a transaction for the purchase or rental of property requires that the person have a *bona fide* intention to buy or lease. It would be extremely anomalous, then, to construe § 3612 more narrowly than § 3610.²¹

Petitioners and the Ninth Circuit can support their interpretation of the statute only by assuming that Congress could not have intended to have "established an administrative remedy and authorized plaintiffs, at their discretion, to bypass it." *Village of Bellwood v. Gladstone Realtors*, *supra*, 569 F.2d at 1020. Such an interpretation, petitioners assert, would ignore "a cardinal rule of statutory construction: that the sections of a statute must be construed 'in connection with every other . . . section so as to produce a harmonious whole.' 2A C. Sands, *Sutherland Statutory Construction* [sic] § 46.05, p. 56 (4th ed. 1973)." Brief for Petitioners at 19. On this assumption, petitioners develop a set of theories about a supposed Congressional preference for the administrative remedy under § 3610 which would be inconsistent with

²¹ Petitioners' suggestion that the language of § 3612 is narrower than that of § 3610 (Petitioners' Brief at 22-29) simply defies reasoned analysis. The two portions of the law use entirely different phraseology and the mere absence of the words "person aggrieved" from a section which allows "[any] rights granted" under the law to be enforced "by civil actions" signifies absolutely nothing. The language of § 3612 just as much as that of § 3610 indicates an intention to define standing as broadly as the Constitution permits.

immediate recourse to the judicial process under § 3612. *Id.* at 20-21.

These arguments are properly addressed to the Congress itself in connection with reconsideration of the Act. They are out of place here because they simply do not reflect the reality of the statute which has already been enacted. There is nothing "inharmonious" about the granting of alternative administrative and judicial remedies under §§ 3610 and 3612. Indeed, Congress left to the determination of the courts in individual cases the question whether the administrative process should be favored, by stating in § 3612 a proviso:

That the court shall continue such civil case brought pursuant to this section or section 810(d) [§ 3610] from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court;

Under the explicit provisions of § 3612, therefore, a court may continue an action filed under that section to permit conciliation efforts by a local or State agency even though no complaint has been made to HUD. And the Congress failed to include in this section either a requirement of mandatory pre-filing with the Secretary of HUD or of mandatory reference to HUD by the district courts.²²

Although petitioners hypothesize a conflict between the holding below and the intention of the Congress, they point to no indications in the legislative history of the statute demonstrating that hypothetical Congressional

²² Compare 42 U.S.C. § 2000e-5(f) (Title VII employment discrimination suit may be brought only after filing charge with EEOC; no provision parallel to § 3612 in Title VII).

purpose. To the contrary, the legislative history demonstrates conclusively that the administrative and judicial remedies were to be independent alternatives (except as provided in § 3612's conditional clause, quoted above). The Senate, in which chamber the bill's fair housing provisions originated (*see* p. 13, *supra*), in fact distrusted an exclusively administrative remedy and wished to assure access to the courts. After the final version of the bill was passed, Senator Hruska expressed the sentiment forcefully:

The improvements in this bill are many. For example, in its original provisions, the housing measure bypassed our judicial system. It would have settled all disputes in this field, including the validity of title to real estate, through administrative processes with no effective rights of appeal—a concept which I hope will never again intrude itself upon this body.

114 CONG. REC. 5990 (March 11, 1968). When the bill reached the House, its proponents and opponents alike viewed §§ 810 and 812 as creating alternative remedial tools. Judiciary Committee Chairman Celler provided a summary of the bill's major provisions, in the course of which he stated, 114 CONG. REC. 9560 (April 10, 1968):

Enforcement: HR 2516 provides three methods of obtaining compliance: administration conciliation, private suits, and suits by the Attorney General for a pattern or practice of discrimination.

...

Private civil actions: In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged discriminatory housing practice occurred. . . .

Representative Cramer opposed acceptance of the Senate version *in toto*, and presented a list of reasons why the bill in his view should have been sent to a Conference Committee, 114 CONG. REC. 9567 (April 10, 1968). One of these was as follows, *id.* at 9568:

(9) Open Housing as drafted in the Senate is unworkable in that it is implemented on the Federal level only through HUD with powers only to persuade, conciliate and regulate. The only other remedy is through civil action in U.S. or State courts [then describing provision for award of attorneys' fees to plaintiffs only]

Minority Leader Ford pointed to a Judiciary Committee staff memo comparing the bill originally passed by the House and the Senate substitute, *id.* at 9609, including this description, *id.* at 9612:

Section 812 states what is apparently an alternative to the conciliation-then-litigation approach above stated: an aggrieved person within 180 days after the alleged discriminatory practice occurred, may, without complaining to HUD, file an action in the appropriate U.S. district court.

No disagreement with these conclusions was ever voiced, and as noted earlier, the House passed the Senate version of the bill without change.

The Ninth Circuit's elaboration of different functions for civil actions brought under §§ 3610 and 3612 (resting on the need for emergency relief), 532 F.2d at 1376, represents little more than that court's views on a policy issue which has been settled by the Congress. Because the language and legislative history of the 1968 Fair Housing Act establish §§ 3610 and 3612 as truly independent and alternative remedial approaches to compliance with the Act, it is improper for the federal courts to place additional limits upon the right to sue under § 3612. Appropriate judicial restraint and respect for Congress' authority was exercised by the court of appeals in the instant matter and by the numerous other courts which have refused to follow *TOPIC*. *See* Brief for Respondents in Opposition, at 16. The result they reached should be affirmed and this Court should specifically disapprove the *TOPIC* construction.

Conclusion

For the foregoing reasons, *amicus* respectfully submits that the judgment below should be affirmed.

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IN THE
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On Petition For A Writ Of Certiorari To The United States
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**BRIEF OF AMICUS CURIAE
THE NATIONAL COMMITTEE AGAINST
DISCRIMINATION IN HOUSING**

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**BRIEF OF AMICUS CURIAE
 THE NATIONAL COMMITTEE AGAINST
 DISCRIMINATION IN HOUSING**

INTEREST OF THE AMICUS CURIAE

With the consent of the parties, the National Committee Against Discrimination in Housing, Inc. (NCDH) submits this brief *amicus curiae* in support of the plaintiffs-respondents, urging affirmance of the

judgment of the United States Court of the Appeals for the Seventh Circuit.

NCDH was founded in 1950 for the purpose of establishing and implementing programs to eliminate racial discrimination and segregation in housing and to broaden housing opportunities for minority group members. Robert C. Weaver, first Secretary of the Department of Housing and Urban Development (HUD) was elected President of NCDH upon its founding. After leaving his post as Secretary, Dr. Weaver was again elected president of NCDH, a position he has held since 1972.

Since its inception, NCDH has carried out affirmative programs of research, education, and litigation in its efforts to achieve the goal of equal housing opportunity in fact, as well as in legal theory. In recent years NCDH has become concerned about practices of some segments of the private home finance industry, such as mortgage lenders and real estate brokers, which have the purpose or effect of perpetuating racial segregation or inducing resegregation of racially integrated neighborhoods. Thus, in its litigation program, NCDH has attacked the practice of racial redlining by mortgage lending institutions. *Harrison v. Heinzerth Mortgage Co.*, 430 F. Supp. 893 (N.D. Ohio 1977); *Laufman v. Oakley Building and Loan Co.*, 408 F. Supp. 489 (S.D. Ohio 1976). In its research efforts, NCDH recently completed a Housing Market Practices Survey under contract with HUD in which it investigated a variety of discriminatory practices by real estate brokers in some 40 cities across the country. This survey showed continued discriminatory treatment of minority homeseekers by the real estate industry.

The practice challenged in the instant action—racial steering—today presents one of the most serious obstacles to realization of the objectives of the federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968. The issue before this Court—whether persons residing in a municipality targeted for racial steering, and the municipality itself, have standing to seek the protection of the federal courts against continuation of this practice—is one of the highest importance. In NCDH's view, resolution of this issue by the Court will bear significantly on the success or failure of the effort to secure the legally protected right to equal opportunity in housing and to eliminate the harmful effects of residential segregation that plague so many communities throughout this country.

QUESTION PRESENTED

Whether individual residents of a small suburban municipality, and the municipality itself, have standing in federal court to challenge the practice of racial steering, which threatens to increase residential segregation and cause social and economic disruption to their community.

SUMMARY OF ARGUMENT

The individual plaintiffs and the Village of Bellwood (hereinafter "respondents") brought this action under section 3612 of Title VIII of the Civil Rights Act of 1968, and other statutes, to enjoin defendant real estate agencies and salespeople from engaging in racial steering.

Racial steering is the practice by which real estate agents direct prospective homeseekers to different neighborhoods or communities depending upon their

race. This practice inevitably leads to the preservation of racially segregated neighborhoods and the resegregation of formerly integrated ones. It also causes direct and substantial injury to residents of affected areas, and to municipalities, in terms of unstable property values, disruption of residential patterns, and the loss of important benefits derived from living in an integrated community.

Petitioners contend that respondents have no cause of action under section 3612, because that section applies only to bona fide purchasers or lessees against whom racial steering is directed. In petitioners' view, the respondents should have filed their complaint under section 3610. However, nothing in the language of the statute, its legislative history, or its underlying policy supports the view that there is any difference between the class of plaintiffs which can sue under section 3612 and that which can sue under section 3610. To the contrary, the evidence shows that Congress intended these provisions to be co-extensive and alternative means of enforcement.

Finally, the petitioners argue that, even if the respondents have a cause of action under section 3612, they have no standing to sue under Article III of the Constitution. In light of the direct and substantial harm sustained by the individual respondents and the Village of Bellwood as a result of petitioners' conduct, the respondents have alleged a sufficient stake in the outcome of the controversy to satisfy the standing requirements of Article III.

ARGUMENT

I. INTRODUCTION

This case presents the important issue of whether black and white residents of a racially integrated suburban municipality, and the municipality itself, can invoke the jurisdiction of the federal courts to enjoin unlawful racially discriminatory real estate practices that threaten to increase residential segregation and adversely affect the social and economic vitality of the community.

The municipality in which the respondents reside is Bellwood, Illinois, a Chicago suburb whose population, according to the 1970 Census, is approximately 22,000. The specific discriminatory practice about which the respondents complain is "racial steering," a term which encompasses a variety of devices by which real estate brokers direct white homeseekers to all-white neighborhoods and direct minority homeseekers to racially integrated or predominantly black neighborhoods.

The respondents bring this action principally under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 *et seq.*, a statute whose broad sweep is expressed in its opening section: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. The goal of Title VIII, as this Court noted in referring to its legislative history, is "to replace the ghettos 'by truly integrated and balanced living patterns.'" *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 211 (1972). As this Court further noted, the policy expressed in Title VIII is one "that Congress considered to be of the highest priority." *Id.*

Petitioners, while apparently conceding that the practice of racial steering is prohibited by Title VIII, claim that the respondents have no standing to bring this matter before the federal courts. Specifically, petitioners contend, first, that the respondents have no standing because they filed this lawsuit pursuant to section 3612 of Title VIII, a section which provides for direct access to the courts for redress of Title VIII violations. Instead, according to petitioners, respondents should have filed their complaint under section 3610, which provides for direct access to the courts 30 days after submitting an administrative complaint to HUD. In petitioners' view, this misstep rendered the federal courts powerless even to consider the respondents' complaint. Second, petitioners, conceding *arguendo* that the respondents have a cause of action under section 3612, contend that Article III of the United States Constitution precludes federal courts from adjudicating respondents' claim because of the lack of a "case or controversy."

NCDH disagrees with both contentions urged by petitioners. First, an analysis of the nature of the harm done by the petitioners' practice of racial steering, and a realistic assessment of the persons upon whom the harm is inflicted, demonstrates that the respondents in this case are among those whose rights Title VIII was designed to protect. Second, the fact that alternative enforcement mechanisms exist under sections 3610 and 3612 does not support the sharp disparity in standing urged by the petitioners. Third, Article III does not preclude the federal courts from adjudicating the respondents' claim of injury resulting from petitioners' alleged violation of Title VIII.

II. IMPACT OF RACIAL STEERING ON RESIDENTS AND MUNICIPALITIES.

The practices of real estate brokers have been instrumental in fostering residential segregation in metropolitan areas and within the various municipalities which make up those areas. See, e.g., Note, *Racial Steering: The Real Estate Broker and Title VIII*, 85 Yale L.J. 808, 809 (1976); United States Commission on Civil Rights, *Equal Opportunity in Suburbia* 16-22 (1974); National Neighbors, *Racial Steering: The Dual Housing Market and Multiracial Neighborhoods* 3, 5-8 (1973); NCDH, *Jobs and Housing; A Study of Employment and Housing Opportunities for Racial Minorities in the Suburban Areas of the New York Metropolitan Region* 69-80 (Interim Report 1970).¹ Chief among these is the practice of racial steering, by which brokers persuade white homeseekers to purchase homes in predominantly white neighborhoods and persuade minority homeseekers to purchase homes in integrated or predominantly black neighborhoods.²

¹ For a detailed study of the practices and ideology of real estate brokers in the Chicago area and their impact on residential segregation, see Helper, *Racial Policies and Practices of Real Estate Brokers* (1969).

² The policy of racial steering is not new: rather, it is simply a contemporary derivative of the real estate industry's time-honored "gatekeeping" function of directing white buyers to predominantly white areas and minority buyers to interracial or all-black areas. Note, *supra*, 85 Yale L. J. at 809; National Neighbors, *supra*, at 9-10; NCDH, *supra*, at 80. In fact, until 1950 the major trade association of the real estate industry affirmatively encouraged racial steering by declaring that:

A realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.

This practice may assume a variety of forms, including, for example, failing to show prospective buyers, because of their race, a home that otherwise would meet their specifications, *e.g.*, *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486, 488 (E.D.N.Y. 1977); *United States v. Robbins*, P.H.E.O.H. Rptr. ¶ 13,655 at 14,265 (S.D. Fla. 1974); maintaining separate listings based on race, *e.g.*, *United States v. Real Estate One, Inc.*, 433 F. Supp. 1140, 1153-55 (E.D.Mich. 1977); *United States v. Long*, P.H.E.O.H. Rptr. ¶ 13,631 at 14,087 (C.D. S.C. 1974), *modified as to relief and affirmed*, P.H.E.O.H. Rptr. ¶ 13,733 (4th Cir. 1975); making false statements concerning the availability of housing, *e.g.*, *United States v. Henshaw Brothers, Inc.*, 401 F. Supp. 399, 401 (E.D.Va. 1974); *United States v. Long*, *supra*, P.H.E.O.H. Rptr. ¶ 13,631 at 14,086-89, dissuading prospective buyers; because of their race,

National Association of Real Estate Boards (changed to National Association of Realtors in 1973), *Code of Ethics*, Pt. III, Art. 34, *quoted in* Helper, *supra* note 1, at 201. Although the reference to race has been deleted, several commentators have noted that this change was one of appearance and not effect. *See, e.g.*, National Academy of Sciences—National Academy of Engineering, *Freedom of Choice in Housing: Opportunities and Constraints* 22 (1972); Helper, *supra* note 1, at 201.

For additional discussions of the nature and extent of racial steering, *see* National Neighbors, *supra*, 10-12, 20-24; NCDH, *supra*, at 80; United States Commission on Civil Rights, *Home Ownership for Lower Income Families: A Report on the Racial and Ethnic Impact of the Section 235 Program* 60-61 (1971). For judicial analyses of the concept of racial steering, *see*, *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486, 487-88 (E.D. N.Y. 1977); *Fair Housing Council v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071, 1075-76 (D.N.J. 1976); *Zuch v. Hussey*, 366 F. Supp. 553, 556-57 (1973) and 394 F. Supp. 1028, 1047-48 (E.D. Mich. 1975).

from purchasing homes in certain areas by disparaging those areas, *e.g.*, *Zuch v. Hussey*, 394 F. Supp. 1028, 1036-38 (E.D. Mich. 1975); and otherwise providing brokerage services on a discriminatory basis, for example, by assigning only white salespeople to white areas and only black salespeople to black or interracial areas, *e.g.*, *United States v. Real Estate One, Inc.*, *supra*, 433 F. Supp. at 1150. *See generally* *Zuch v. Hussey*, *supra*, 394 F. Supp. at 1034-45. The courts uniformly have found these practices to be violative of section 3604(a) of Title VIII, which makes it unlawful to refuse to negotiate or "otherwise make unavailable" a dwelling to any person because of his or her race. *See, e.g.*, *United States v. Real Estate One, Inc.*, *supra*, 433 F. Supp. at 1144; *Fair Housing Council v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F. Supp. 1071, 1075 (D.N.J. 1976); *Zuch v. Hussey*, *supra*, 394 F. Supp. at 1047-48, 1050-51; *United States v. Henshaw Brothers, Inc.*, *supra*, 401 F. Supp. at 402; *United States v. Robbins*, *supra*, P.H.E.O.H. Rptr. ¶ 13,655 at 14,265; *United States v. Long*, *supra*, P.H.E.O.H. Rptr. ¶ 13,631 at 14,090-91.²

² These practices also have been found to violate section 3604(b) which prohibits discrimination in the provision of services, *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*, 429 F. Supp. at 488; *United States v. Long*, *supra*, P.H.E.O.H. Rptr. ¶ 13,631 at 14,090-91; Note, *supra*, 85 Yale L.J. at 821, n. 48, section 3604(c) which proscribes making statements that indicate a preference based on race, *United States v. Long*, *supra*, P.H.E.O.H. Rptr. ¶ 13,631 at 14,091; *cf. Mayers v. Ridley*, 465 F.2d 630, 632-35 (D.C. Cir. 1972) (en banc), and section 3604(d) which prohibits false representations concerning the availability of housing, *United States v. Robbins*, *supra*, P.H.E.O.H. Rptr. ¶ 13,655 at 14,265; *United States v. Long*, *supra*, P.H.E.O.H. Rptr. ¶ 13,631 at 14,091.

For the individual homeseeker, who often relies entirely on the real estate broker in his or her search for housing, racial steering usually results in the denial, on racial grounds, of free housing choice and in the confinement to certain neighborhoods for race-related reasons. The adverse impact of racial steering on the homeseeker—the direct object of the discriminatory practice—is thus apparent.

The homeseeker, however, is by no means the only one adversely affected by racial steering. Those who live in the neighborhood or municipality that is being subjected to racial steering and, indeed, the municipality itself, are also direct victims of this discriminatory housing practice. The impact of racial steering on residential patterns far outweighs that imposed by the decisions of individual sellers or renters of housing. See *Equal Opportunity in Suburbia, supra*, at 16. As one court explains:

. . . [T]he influence of [real estate brokers] extends far beyond any one meeting of the minds between an individual purchaser and an individual seller. . . . [R]eal estate intermediaries actively and passively mislead potential purchasers in an effort to preserve or extend segregated housing patterns. In such a situation the factor of racial prejudice which Congress sought to eliminate is not merely introduced into the housing market in a discrete incident. It is given an effect extending beyond any one transaction involving a single bigoted purchaser or seller.

Fair Housing Council v. Eastern Bergen County Multiple Listing Service, Inc., supra, 422 F. Supp. at 1075-76. Indeed, one Baltimore, Maryland real estate firm, according to the United States Commission on Civil Rights, reportedly sells about 350 homes each

month. *Equal Opportunity in Suburbia, supra*, at 16. On this scale, racial steering represents a powerful force for manipulation of the housing market, often for the private gain of real estate brokers, and inevitably to the social and economic detriment of the community.

The harm which results to the residents and the municipality is both real and tangible. For one thing, racial steering directly contributes to residential separation of the races by maintaining the all-white character of neighborhoods which otherwise would have become racially integrated and by transforming racially integrated neighborhoods into all-black ones.*

* Contrary to what is often believed, these trends are not, for the most part, attributable to economic considerations. For example, income and occupational disparities between whites and blacks have narrowed markedly in recent years. A large and growing black middle class now exists which can realistically afford most suburban housing. See *United States v. Real Estate One, Inc., supra*, 433 F. Supp. at 1146; NCDH, *supra*, at 41; *Freedom of Choice in Housing, supra* note 2, at 4, 5; National Academy of Sciences, *Segregation in Residential Areas: Papers on Racial and Socio-economic Factors in Choice of Housing* 23 (1973). As one commentator writes:

[I]t is commonly believed that a certain fraction of segregation by color is attributable to economic (class) factors, but it is becoming increasingly evident that this is a small fraction indeed and that black disadvantages in educational attainment, occupational achievement, and income account for only a modest amount of their observable segregation. . . . It is the force of discrimination on the basis of color that is the principal factor underlying segregation.

Segregation in Residential Areas, supra, at 190-91 (article by L. Schnore).

In addition, residential segregation cannot be explained entirely by the attitudes of white Americans. Surveys show that since the 1940's, the percentage of whites willing to accept black neighbors of the same socioeconomic status has increased from less than 40

See *Zuch v. Hussey*, *supra*, 366 F. Supp. at 557; *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1, 2 (N.D. Ohio 1975); *Equal Opportunity in Suburbia*, *supra*, at 21; Taeuber and Taeuber, *Negroes in Cities: Residential Segregation and Neighborhood Change* (1965). If this process persists, it may "irreparably distort any chance for normal and stable change." *Zuch v. Hussey*, *supra*, 394 F. Supp. at 1034.

In addition, racial steering may adversely affect property values by artificially withdrawing prospective buyers from the market. For example, racial steering makes it more difficult for residents in "targeted" areas to sell their homes because potential white buyers are being steered to other neighborhoods or towns. As a consequence, property values decline. See *Wheatley Heights Neighborhood Coalition v. Jenna Realty Co.*, *supra*, 429 F. Supp. at 489.

Racial steering may lead to even more pernicious results in interracial or "changing" neighborhoods, where steering often works hand-in-hand with the practice of blockbusting⁵ to create "panic selling" and

percent to nearly 80 percent. *Segregation in Residential Areas*, *supra*, at v., 21-29, 79; *Freedom of Choice in Housing*, *supra* note 2, at 9. Moreover, recent sociological studies confirm that "the quality and convenience of housing and neighborhood services take precedence over racial prejudice in housing decisions." *Segregation in Residential Areas*, *supra*, at 19. See *id.* at 22-80; *Freedom of Choice in Housing*, *supra* note 2, at 8-9.

⁵ Blockbusting is the process by which real estate agents prey on racial fears by rumors that blacks are moving into an area in order to induce sales by white residents. See *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115 (5th Cir.), *cert. denied*, 414 U.S. 826 (1973); *United States v. Mitchell*, 335 F. Supp. 1004 (N.D. Ga. 1971); *Zuch v. Hussey*, *supra*, 366 F. Supp. at 555-56;

rapid racial turnover. One commentator explains the relationship of these two practices as follows:

[Steering] pays well when used in "blockbusting" strategy, where a broker, in order to frighten white owners into selling their homes, represents that blacks are purchasing homes in the neighborhood. The broker then guides black buyers toward, and white buyers away from, the transitional neighborhood.

Note, *supra*, 85 Yale L.J. at 812 (footnote omitted). See, e.g., *United States v. Robbins*, *supra*, P.H.E.O.H. Rptr. ¶ 13,655 at 14,264. Neighborhoods in this situation immediately begin to show disturbing signs of change:

"For sale" signs become prevalent: advertising by area brokers disappears from the metropolitan press; mass door-to-door, telephone, and mail solicitation by real estate agents begins; loans to refinance homes are discontinued by companies holding existing mortgages; residents are told from all sides that the community will be all-black in a short time; and prospective buyers for homes in the community seem all to be black.

National Neighbors, *supra*, at 11. These conditions inevitably produce market instability, a decline in property values, and an eventual resegregation of the area. One expert witness, testifying before the court in *Zuch v. Hussey*, described this process as follows:

The first black family entering an all-white neighborhood tends to pay more for the housing than would be paid by white families purchasing the

United States v. Robbins, *supra*, P.H.E.O.H. Rptr. ¶ 13,655 at 14,264. This practice is expressly prohibited by Title VIII. 42 U.S.C. § 3604(e).

identical house. Then because of the fears generated, the perception of white residents in the area causes a great many white people to put up a great many houses for sale within a very short period of time. This flooding of the market tends to have a negative effect on the price stabilization of the housing in that area.

When the area becomes predominantly black, then you again achieve price stabilization in the area. You may also achieve social and psychological stability when a neighborhood becomes black because what you have done is re-segregated the neighborhood and the process of change, of transition, is already in the past.

394 F. Supp. at 1032. See also *United States v. Mitchell*, 335 F. Supp. 1004, 1005-06 (N.D. Ga. 1971).

Not only does racial steering adversely affect the rights of individual residents, but it also poses serious problems for the municipality. For example, a continued decline in property values can erode the municipal tax base upon which the entire community relies for financing essential government services. In addition, racial steering inevitably exacerbates the problem of segregation in the schools because "segregation in our schools . . . follows residential segregation wherever a 'neighborhood' pattern of districts is followed." National Academy of Sciences, *Segregation in Residential Areas: Papers on Racial and Socioeconomic Factors in Choice of Housing* 191 (1973). See also, Hermalin and Farley, *The Potential for Residential Integration in Cities and Suburbs: Implications for the Busing Controversy*, 38 Am. Soc. Rev. 595-619 (1973). Rapid residential change—through induced "panic selling" or otherwise—also poses a threat to the municipality's very character, as well as

to its ability to regulate its rate of growth. Cf. *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85, 94-95 (1977); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974). Finally, racial segregation increases the possibility that there will be a resurgence of the kind of racial unrest that erupted across the nation a decade ago. *National Advisory Commission on Civil Disorders*, Report 225 (1968).

The problems that flow from racial steering are not limited to central cities and their residents. Increasingly, they are affecting suburban municipalities as well.⁶ See *United States v. Real Estate One, Inc.*, *supra*, 433 F. Supp. at 1145-46 (northwest suburbs of Detroit); *Zuch v. Hussey*, *supra*, 394 F. Supp. at 1031-34 (same); *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*, 429 F. Supp. at 487-88 (New York metropolitan area—Babylon, N.Y.); *Fair Housing Council v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*, 422 F. Supp. at 1074-76 (same—Bergen County, N.J.); *Heights Community Congress v. Rosenblatt Realty, Inc.*, *supra*, 73 F. R.D. at 3 (Cleveland Heights, Ohio); *Village of For-*

⁶ Between 1970 and 1974, according to the Bureau of Census, black population in suburban areas increased by more than one-half million. Bureau of the Census, Current Population Reports, the Social and Economic Status of the Black Population in the United States, 1974, Table 5 at 14, Table 6 at 15 (Ser. P-23, No. 54, 1975).

However, there is no indication that this increase in the suburban black population has produced any sizable increase in the number of integrated communities. Note, *supra*, 85 Yale L.J. at 808 n.2.; *Equal Opportunity in Suburbia*, *supra*, at 11-12, 30-31, 44-46; Connolly, *Black Movement into the Suburbs: Suburbs Doubling Their Black Populations During the 1960s*, 9 Urb. Aff. Q. 91, 97-98 (1973). See also *United States v. Real Estate One, Inc.*, *supra*, 433 F. Supp. at 1145-46.

est Park v. Fairfax Realty, P.H.E.O.H. Rptr. ¶ 13,699 (1975) and P.H.E.O.H. Rptr. ¶ 13,784 at 14,905 (N.D. Ill. 1976) (suburbs of Chicago). One such suburb is the Village of Bellwood.

Bellwood is a small suburban municipality with a population of approximately 22,000 people. In 1975, Village officials and residents became concerned about reports that Bellwood had become a "target" community to which realtors and their sales personnel were referring blacks who wished to purchase homes in Chicago's western suburbs. According to these reports, area realtors were steering white homeseekers away from Bellwood to nearby, predominantly white towns, such as Berkeley, Westchester, and Hillside. In addition, within Bellwood itself, real estate agents were discouraging whites from purchasing homes in integrated, "changing," or predominantly black neighborhoods, and discouraging blacks from buying homes in the largely white, western part of the town.

Wishing to preserve the integrated character of the community and avoid the fear, instability, and social disruption caused by rapid racial change, interested residents and Village officials sought to determine which realtors, if any, were engaging in these discriminatory practices. Accordingly, in September 1975, the Village organized and conducted an investigation of real estate offices in the Bellwood area. Couples of different races, acting as prospective homeseekers, visited various real estate offices and expressed similar preferences as to the type, size, price, and general location of houses in which they would be interested. These "tests" revealed that agents of petitioners Gladstone Realtors and Robert A. Hintze Realtors were discriminating against prospective homeseekers on the basis of

race by directing couples making similar requests to houses in different areas, depending upon the couple's race.⁷ Aware of the harmful effects of racial steering on their community, residents of the Village and the Village of Bellwood itself initiated this action to bring about a cessation of this practice.

III. THERE IS NO DIFFERENCE BETWEEN THE CLASS OF PLAINTIFFS WHICH MAY SUE UNDER SECTION 3610 AND THAT WHICH MAY SUE UNDER SECTION 3612.

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 *et seq.*, provides three alternative means of enforcement, two of which involve enforcement by private parties.⁸ Section 3610 empowers the Secretary of HUD to receive and investigate administrative complaints regarding discriminatory housing practices, and to seek to resolve such complaints by conference, conciliation, and persuasion. The complainant, however, may institute court action 30 days after filing

⁷ For example, when Lonnie M. Randolph, who is black, visited Gladstone Realtors in Westchester and asked for homes in the \$30,000 to \$40,000 range, he was shown five house listings, all in racially integrated neighborhoods in eastern Bellwood. However, when Edward B. Powell, a white, visited the same office and made the same request, he was given five entirely different listings, all of which were in all-white neighborhoods in Westchester, southern Broadview and western Bellwood. Mr. Powell was advised by the salesman that there were some areas of Bellwood that he did not want to show him because they were "bad areas." When asked why they were bad, the salesman replied that they "were integrated." Brief for Respondents in Opposition to Petition for Certiorari, at 5 n.2.

⁸ The third alternative authorizes the Attorney General to bring a civil action when he or she has cause to believe that a "person or group of persons is engaged in a pattern of resistance to the full enjoyment of any of the rights granted" by the Act. 42 U.S.C. § 3613.

the complaint, regardless of whether HUD has been able to conciliate the dispute. 42 U.S.C. § 3610(d). Section 3612 alternatively provides for direct access to the courts, with no requirement that a complaint first be filed with HUD. 42 U.S.C. § 3612(a).

Petitioners contend that the respondents are not entitled to bring this suit under the federal Fair Housing Act because they "were not good faith purchasers or renters." Brief for Petitioners, at 13. In *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), this Court held that under the federal Fair Housing Act residents of a large apartment complex could challenge a landlord's alleged discrimination against nonwhite rental applicants, even though the tenants were not the intended objects of the discrimination. In finding that the Act afforded a cause of action to the tenants, this Court pointed to legislative history which expressed a clear congressional intent to define standing under the Act "as broadly as is permitted by Article III of the Constitution." *Id.* at 209.

While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered

The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community," 114 Cong. Rec. 2706, and as Senator Mondale who drafted S. 810(a) said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living patterns." *Id.*, at 3422.

409 U.S. at 210, 211 (footnote omitted). Accordingly, the Court concluded that the tenants had standing to protect their statutory right to enjoy the "benefits of living in an integrated society." *Id.* at 208, 209-210. Cf. *Linmark Associates, Inc. v. Township of Willingboro*, *supra*, 431 U.S. at 94-95. In light of the substantial harm which racial steering will inflict on the respondents' right to live in an integrated community, it is clear that they too are victims of discrimination meant to be protected by the Act.⁹

Nonetheless, petitioners rely on differences in the alternative means of enforcement under sections 3610 and 3612 to construct an artificial distinction, for purposes of standing, between those two sections. Petitioners contend that while section 3610 confers standing broadly on those who are injured by discriminatory practices aimed at others (*see Trafficante, supra*), section 3612 provides access to federal court only for so-called "direct" objects of discrimination, i.e., bona fide purchasers or renters who have been steered away from housing opportunities due to their race. Because the respondents here chose to sue under section 3612 rather than section 3610, in petitioners' view they lack standing to sue under the Act.

⁹ One commentator has identified the goals underlying enactment of Title VIII as follows: "preventing humiliation inflicted by unequal treatment based on race, ensuring freedom of choice in housing, and promoting residential integration." Note, *supra*, 85 Yale L.J. at 822. While the second goal concerns prospective buyers or renters, the first and third goals are clearly intended to benefit current residents as well as purchasers: "When a broker steers, his discriminatory practices insult the dignity of black buyers and residents of black neighborhoods . . . The practice [also] helps to maintain all-white neighborhoods and encourages resegregation of interracial areas by preventing buyers from seeing homes that they would have purchased had they been given the opportunity." *Id.* at 823-24.

The petitioners' argument rests largely on the assumption that section 3612 is somehow narrower in scope than section 3610. It also relies on a supposed congressional preference for administrative remedies, which would be inconsistent with according all authorized plaintiffs immediate recourse to the courts. Petitioners hypothesize that Congress intended to allow only "direct" objects of discrimination to initiate suits under section 3612, while requiring all other victims of housing discrimination to pursue the supposedly slower, less adversarial administrative remedy under section 3610.¹⁰

The difficulty with this argument is that none of these assumptions find any support in the language, legislative history, or underlying policy of the Act. To the contrary, the petitioners' construction of the statute would impose a limitation, never contemplated by Congress, on the class of plaintiffs which can seek judicial relief under the Act. Indeed, with the exception of the Ninth Circuit in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976), every court which has addressed the issue has held that individuals who are adversely affected by racial steering or other discriminatory housing practices, even though they are not bona fide purchasers or renters against whom the discrimination was directed, have standing to sue under section 3612 of the Act. *Village of Bellwood v. Gladstone Realtors*, 569 F.2d 1013 (7th Cir.), *cert. granted*, 46 U.S.L.W. 3765 (June 12, 1978); *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*, 429 F.Supp. 486; *Fair Housing Council v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*, 422 F.Supp. 1071; *Village of*

¹⁰ Petitioners' argument is essentially the same as that adopted by the Court of Appeals for the Ninth Circuit in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir.), *cert. denied*, 429 U.S. 859 (1976).

Forest Park v. Fairfax Realty, *supra*, P.H.E.O.H. Rptr. ¶ 13,699 and P.H.E.O.H. Rptr. ¶ 13,784; *Heights Community Congress v. Rosenblatt Realty, Inc.*, *supra*, 73 F.R.D. 1; *cf. Cornelius v. City of Parma*, 374 F. Supp. 730, 741 (N.D. Ohio 1974) (dismissed on other grounds); *Zuch v. Hussey*, *supra*, 366 F.Supp. 553 and 394 F.Supp. 1028. Three of these cases—*Village of Bellwood*, *Wheatley Heights*, and *Fair Housing Council*—were decided after *TOPIC* and expressly rejected the Ninth Circuit's reasoning in that case.

A. The Structure Of Title VIII Does Not Support The Petitioners' Contention That Only Bona Fide Purchasers Or Renters May Sue Under Section 3612.

Petitioners assert that the focus of section 3612 "is considerably more narrow" than that of section 3610. Brief for Petitioners, at 22. An examination of these two sections, however, belies that contention.

Section 3610 provides in part:

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary . . .

(d) If within thirty days after a complaint is filed . . . the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may . . . commence a civil action . . .

Alternatively, section 3612(a) states that "[t]he rights granted by sections 3603, 3604, 3605, and 3606 may be enforced by civil actions . . ." Unlike section 3610, section 3612 contains no express limitation on the class of plaintiffs which may invoke it. Thus, the

petitioners err in claiming that "on [its] face" section 3612 "promise[s] relief only to persons who are direct victims of discrimination . . ." Brief for Petitioners, at 15. That section does no such thing. To the contrary, the language of these provisions suggests, if anything, that the class of plaintiffs that may sue under section 3612 is broader than that which may sue under section 3610.

Petitioners also err in contending that the *scope of rights* protected by section 3612 is somehow narrower than that protected by section 3610.¹¹ Section 3610

¹¹ Petitioners attempt to define the scope of rights conferred by section 3604 narrowly, stating that section 3604 "proscribes certain discriminatory practices in the 'sale or rental' of housing." Petitioners thereby infer that "because the individual plaintiffs were not bona fide homeseekers, they could not have been discriminated against in the sale or rental of housing." Brief for Petitioners, at 22 n. 5. Section 3604, however, is not so limited. That section makes it unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, or national origin.

(c) To make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the

applies to individuals who claim to have been injured by "a discriminatory housing practice." 42 U.S.C. § 3610(a). Section 3602 defines "discriminatory housing practice" as "an act that is unlawful under section 3604, 3605 or 3606." 42 U.S.C. § 3602(f). Similarly, section 3612 provides for enforcement of rights conferred under sections 3603, 3604, 3605, and 3606. 42 U.S.C. § 3612(a). Thus, the substantive protections specified in section 3612 are almost identical to those covered by section 3610. This hardly supports the petitioners' contention that section 3612 is available to a more limited class of plaintiffs than section 3610.

Nor does an examination of the statute support the petitioners' claim that the alternative remedies provided by the two sections reflect "a strong commitment by Congress to the use of federal administrative remedies and the development of effective state and local remedies." Brief for Petitioners, at 20. To the contrary, this Court has recognized that "the main generating force [for enforcement of the Act] must be private suits in which . . . the complainants act not only on their own behalf but also 'as private attorneys general in vindicating a policy that Congress considered to be of the highest priority.'" *Trafficante, supra*, 409 U.S. at 211 (quoting from the brief *Amicus Curiae* for the United States).

entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin.

Not only does this section prohibit a broad range of discriminatory housing practices which are not directly related to the imminent "sale or rental" of a home, but only the first clause of subsection 3604(a) actually requires that a bona fide offer to purchase or rent be made.

In addition, Title VIII does not even require full exhaustion of administrative remedies. While section 3610 does provide for the filing of an administrative complaint and, in certain instances, deferral to appropriate state or local agencies, it also allows the complainant to commence a civil action if the complaint has not been conciliated within thirty days after it is filed. 42 U.S.C. § 3610(d). It is clear from more than ten years of experience with this procedure, that HUD simply is unable to process complaints within the "short time frame provided in section 810(d)." *Statement of Chester C. McGuire, Assistant Secretary for Fair Housing and Equal Opportunity Before the Subcomm. on the Constitution of the Senate Judiciary Comm. 5* (April 10, 1978) (hearings on S. 571). Surely, this procedure is inconsistent with the claim of a strong congressional commitment to exhaustion of administrative remedies.

Moreover, contrary to indicating a predetermined preference for administrative remedies, Congress has empowered the courts to determine on a case-by-case basis whether the administrative process should be favored. Thus, section 3612(a) provides:

That the court shall continue such civil case brought pursuant to this section or section 3610 from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a state or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the secretary or to the local or State agency and which practice forms the basis for the action in court;

Petitioners nevertheless claim that because section 3610 contemplates the resolution of disputes in "the

slower, less adversary context" of an administrative proceeding, *see TOPIC, supra*, 532 F.2d at 1276, it necessarily was meant to handle complaints from victims of discrimination who are not direct objects of the unlawful practice. This contention, however, ignores the fact that because complainants may sue as early as thirty days after filing a complaint, section 3610 does not provide the leisurely process which petitioners had envisioned.

Finally, the statute itself makes it clear that sections 3610 and 3612 were intended as co-extensive and alternative remedies available to the same class of plaintiffs. As the court in *Brown v. Lo Duca*, 307 F.Supp. 102 (E.D. Wis. 1969), explained:

When one compares §§ 3610 and 3612, it is noted that both sections have provisions dealing with time, venue, amount in controversy, and the type of relief available. If § 3612 had been intended simply as an adjunct to § 3610, such repetition would have been unnecessary. Further, § 3610 requires a complaint to be filed with the Secretary within 180 days after the alleged violation occurred. Section 3612 requires a civil action be brought within the same time limit—180 days. The civil action in § 3612 could not refer to an action brought only after pursuing an administrative remedy of § 3610 because no time has been provided for the agency to act.

307 F. Supp. at 103. Further support for this proposition is found in the above quoted proviso from section 3612(a) which allows courts to stay proceedings in cases "brought pursuant to this section or section 3610" pending resolution of an administrative complaint, and in section 3610(f) which provides that the Secretary of HUD shall terminate all efforts to con-

ciliate whenever an action, "filed . . . in either Federal or State court, pursuant to this section or section 3612" comes to trial. The use of the disjunctive in these two sections shows that Congress intended sections 3610 and 3612 to be co-extensive alternatives, i.e., any complainant can choose either means of enforcement or both. *Accord, Marr v. Rife*, 503 F.2d 735, 739 (6th Cir. 1974); *Miller v. Poretsky*, 409 F.Supp. 837, 838 (D.D.C. 1976); *Warner v. Perrino*, P.H.E.O.H. Rptr. ¶ 13,717 (N.D. Ohio 1975); *Fort v. White*, 383 F.Supp. 949, 952 n.4 (D. Conn. 1974); *Young v. AAA Realty Co. of Greensboro, Inc.*, 350 F.Supp. 1382, 1384-85 (M.D.N.C. 1972); *Crim v. Glover*, 338 F.Supp. 823, 825-26 (S.D. Ohio 1972); *Johnson v. Decker*, 333 F.Supp. 88, 90-92 (N.D. Cal. 1971); *Brown v. Lo Duca, supra*, 307 F.Supp. at 103.

Accordingly, with the exception of *TOPIC, supra*, every court which has addressed the issue has held that there is no difference in the class of plaintiffs which may seek enforcement of Title VIII rights under sections 3610 and 3612. *Village of Bellwood v. Gladstone Realtors, supra*, 569 F.2d at 1013; *Wheatley Heights Neighborhood Coalition v. Jenna Resales, Co., supra*, 429 F.Supp. at 488-91; *Fair Housing Council v. Eastern Bergen County Multiple Listing Service, Inc., supra*, 422 F.Supp. at 1078, 1081-82; *Village of Forest Park v. Fairfax Realty, supra*, P.H.E.O.H. Rptr. ¶ 13,699.¹² As the court concluded in the *Bergen County* case:

¹² This reading of the statute is also supported by the fact that HUD, the agency charged with administering the federal Fair Housing Act, makes no distinction between the class of persons which may bring suit under section 3610 and that which may bring suit under section 3612. See 24 C.F.R. § 105.16 (1976). In addition, HUD's 1976 publication, *Fair Housing USA*, describes

The inclusion of both section 3610 and 3612 in Title VIII is in itself the best evidence that Congress intended to provide alternate paths to relief. The Department of Justice strongly urges this proposition as *amicus curiae*. The clear weight of judicial authority is in support of such a construction of Title VIII.

422 F.Supp. at 1078.

B. Nothing In The Legislative History Of Title VIII Supports The Petitioners' Contention That Only Bona Fide Purchasers Or Renters May Sue Under Section 3612.

The legislative history of Title VIII clearly demonstrates that sections 3610 and 3612 were meant to be alternative and co-extensive methods of enforcement. The history of the Act provides no support for the petitioners' contention that standing under section 3612 is narrower than that under section 3610.

As this court noted in *Trafficante, supra*, section 3610 was derived from an amendment offered by Senator Mondale and incorporated into a substitute bill introduced by Senator Dirksen. 409 U.S. at 210 and n.9. Section 3612 was originally contained in the Dirksen bill and remained essentially unchanged in the version that was enacted into law. 114 Cong. Rec. 4573 (1968).

At the request of the sponsors of the Dirksen substitute, the Department of Justice prepared a memorandum analyzing the bill. See 114 Cong. Rec. 4906-08 (1968). This memorandum indicated that the authors

sections 3610 and 3612 as being alternative modes of enforcing the Act. These interpretations are entitled to great deference by the courts. *Nashville Gas Co. v. Satty*, 98 S.Ct. 347, 351 n.4 (1977); *Trafficante, supra*, 409 U.S. at 210; *Griggs v. Duke Power Co.*, 401 U.S. 424, 433-34 (1971); *Udall v. Tallman*, 380 U.S. 1, 16 (1965).

of section 3612 intended it to be an alternative method of enforcement in addition to that afforded under section 3610:

In addition to the administrative remedy provided through the Department of Housing and Urban Development, the bill provides for an immediate right to proceed by civil action in an appropriate Federal or State court.

114 Cong. Rec. 4908 (1968). The Justice Department memorandum did not specify any rights as being enforceable exclusively by section 3610; nor did it suggest that section 3612 was meant to provide relief to a narrower class of persons than that protected under section 3610. Furthermore, there was no suggestion that Congress in any way preferred the administrative process under section 3610 to direct access to the courts under section 3612. Indeed, comments by Senator Hruska immediately prior to passage of the bill suggest that some legislators were in fact mistrustful of relying solely on administrative remedies:

The improvements in this bill are many. For example, in its original provisions, the housing measure bypassed our judicial system. It would have settled all disputes in this field, including the validity of title to real estate, through administrative processes with no effective rights of appeal—a concept which I hope will never again intrude itself upon this body.

114 Cong. Rec. 5990 (1968).

When the Dirksen bill reached the House, its proponents and detractors both agreed that sections 3610 and 3612 provided alternative means of enforcement. For example, then-Minority Leader Gerald Ford, a

supporter of the bill, submitted a staff memorandum prepared by the House Committee on the Judiciary, which described the two sections as alternatives:

Section 812 states what is apparently an alternative to the conciliation-then-litigation approach above stated; *an aggrieved person* within 180 days after the alleged discriminatory practice occurred may, without complaining to HUD, file an action in the appropriate U. S. district court.

114 Cong. Rec. 9612 (1968) (emphasis added). Representative Celler, Chairperson of the House Judiciary Committee and also a proponent of the bill, characterized these provisions in a similar fashion:

Enforcement: HR 2516 provides three methods of obtaining compliance: administrative conciliation, private suits, and suits by the Attorney General for a pattern and practice of discrimination.

. . . .

Private civil actions: In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged discriminatory housing practice occurred

. . . .

114 Cong. Rec. 9560 (1968). Finally, Representative Cramer in opposing the Senate version of the bill, described the remedial provisions as follows:

(9) Open Housing as drafted in the Senate is unworkable in that it is implemented on the Federal level only through HUD with power only to persuade, conciliate and regulate. The only other remedy is through civil action in U. S. or State courts.

114 Cong. Rec. 9568 (1968). Throughout this debate, there was never any suggestion that section 3610 would

apply to certain types of complainants, while section 3612 would apply to others.

Moreover, petitioners' reliance on the Senate debate over the Allott amendment for the proposition that Congress had "an abiding concern that the Act" not be used "as an engine of harassment" is misplaced. Brief for Petitioners, at 30-34. During the Senate's consideration of the Dirksen bill, Senator Allott offered an amendment to section 3604(a) to insert the phrase "after the making of a bona fide offer" in the clause prohibiting any refusal to sell or rent housing because of a person's race. 114 Cong. Rec. 5515 (1968). While quoting at length from a colloquy between Senators Allott and Mondale, petitioners omit Senator Allott's concluding remarks which illustrate the limited purpose of the amendment:

[The amendment] applies to sale or rental—the first four words only of line 7.

It will be noted that the latter part of paragraph (a) is not conditioned upon a bona fide offer, because the amendment as offered concludes with the word "or" rather than "and".

114 Cong. Rec. 5515 (1968). It was on this basis that Senator Mondale accepted the amendment and incorporated it into the bill. *Id.* at 5516.

Finally, petitioners make much out of the fact that while section 3610 contains the term "person aggrieved," section 3612 provides only that the rights guaranteed by the Act "may be enforced by civil actions." As noted above, *see* Part III-A, *supra*, there is nothing in the language of these two sections which would lead inevitably to the conclusion that section 3610 is broader than section 3612. In addition, far

from corroborating the petitioners' hypothesis, the legislative history indicates that the words "person aggrieved" were means to limit standing, not to expand it.

In hearings before the House Judiciary Committee in 1966, Representative Cramer criticized the House version of the fair housing bill on the grounds that section 406—the precursor to section 3612—simply provided that the "rights granted [by the Act] may be enforced by civil action," without limiting standing to "persons aggrieved." Representative Cramer explained that the right to sue under the comparable public accommodations statute was limited to "persons aggrieved," and the omission of this limitation from the fair housing law might leave the question of who could bring suit under the law too open-ended. In responding to this criticism, then-Attorney General Katzenbach stated that he had no objection to the words being added, but that, in his view this was entirely unnecessary. As a result, the words were never inserted. *Hearings on H.R. 3296 Before the House Comm. on the Judiciary*, 89th Cong., 2d Sess. 1203 (1966).

Thus, in the view of the Attorney General, the standard for determining who may institute litigation under the fair housing law was the same, regardless whether the term "persons aggrieved" was included or excluded. Representative Cramer's only concern was that omission of this language would *broaden* standing to sue for violations of the Act. Neither Attorney General Katzenbach nor Representative Cramer suggested that omission of the term "person aggrieved" in any way would limit the scope of standing. Consequently, their views directly contradict the position advanced by petitioners here.

C. Policy Considerations Underlying The Act Further Refute The Petitioners' Contention That Only Bona Fide Purchasers Or Renters May Sue Under Section 3612.

Title VIII begins with the statement: "It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. As this Court observed in *Trafficante, supra*, this policy is one "that Congress considered to be of the highest priority." 409 U.S. at 211. Moreover, Title VIII, as a civil rights statute, "should be read expansively to fulfill [its] purpose." *Mayers v. Ridley*, 465 F.2d 630, 635 (D.C. Cir. 1972) (*en banc*). Accordingly, courts have construed the federal Fair Housing Act broadly to prohibit all forms of conduct, sophisticated as well as simple-minded, which foreclose, impede, or otherwise limit access to housing on the basis of race. See, e.g., *Williams v. Matthews Company*, 499 F.2d 819, 826 (8th Cir.), *cert. denied*, 419 U.S. 1021 (1974); *United States v. Pelzer Realty Company, Inc.*, 484 F.2d 438 (5th Cir. 1973). *cert. denied*, 416 U.S. 936 (1974); *United States v. Youritan Construction Co.*, 370 F. Supp. 643, 648 (N.D. Cal. 1973), *modified on other grounds*, 509 F.2d 623 (9th Cir. 1975); *United States v. Henshaw Brothers, Inc.*, *supra*, 401 F. Supp. at 402; *Zuch v. Hussey, supra*, 394 F. Supp. at 1047.

This court also has recognized that private litigation represents "the primary method of obtaining compliance with the Act." *Trafficante, supra*, 409 U.S. at 209. It has further pointed out the futility of relying exclusively on administrative remedies:

HUD has no power of enforcement. So far as federal agencies are concerned only the Attorney General may sue; yet, as noted, he may sue only

to correct "a pattern or practice" of housing discrimination. That phrase "a pattern or practice" creates some limiting factors in his authority which we need not stop to analyze. For, as the Solicitor General points out, most of the fair housing litigation conducted by the Attorney General is handled by the Housing Section of the Civil Rights Division, which has less than two dozen lawyers. Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits in which, the Solicitor General says, the complainants act not only on their own behalf but also "as private attorneys general in vindicating a policy that Congress considered to be of the highest priority."

409 U.S. at 210-211.¹³

Nevertheless, petitioners urge that victims who are not direct objects of discrimination, in the sense of being bona fide purchasers or lessees, should be denied

¹³ In contrast to this analysis, petitioners offer the following description of the policies underlying Title VIII:

Given the magnitude of the problem of discrimination in housing, Congress wisely decided that our national housing goals could not be attained solely through federal court litigation, but that voluntary compliance and increased efforts by state and local officials were also necessary. In summary, the central purpose of Section 3610 is two-fold: (1) to effectuate the policies of the Fair Housing Act without costly litigation, and (2) to encourage the enactment and enforcement of state and local fair housing laws.

Brief for Petitioners, at 21. Not only do petitioners fail to cite any legislative history or other authority in support of this statement, but petitioners' description also contradicts this Court's finding that in view of "the enormity of the task of assuring fair housing . . . the main generating force must be private suits in which . . . the complainants act . . . as private attorneys general." *Trafficante, supra*, at 211.

access to the courts under section 3612. This proposition conflicts with the underlying purpose of the Act. So-called "indirect" victims of discrimination, such as residents of a neighborhood being subjected to blockbusting or racial steering, have no less of a need to choose the most effective and appropriate remedy under the Act, than do purchasers or renters against whom the discriminatory practice is directed. Indeed, the harm suffered by the former may be substantially greater than that inflicted on the latter. For example, while homeseekers who are unlawfully steered by real estate agents often find suitable housing elsewhere, residents of the community in which steering takes place ordinarily remain in that community and must endure the full brunt of the discrimination's adverse effects. *See Part II, supra.*

In addition, bona fide purchasers frequently decide not to sue, because by the time a suit could be concluded, the buyer probably will have found housing in other areas or through alternative mechanisms. *See, e.g., United States v. Pelzer Realty Co., supra*, 484 F.2d at 441, in which a real estate broker told two black homeseekers that they could probably force a sale by bringing a lawsuit, but that "he would tie the case up in court for so long they would no longer want the home." Therefore, if residents of a town which has been "targeted" for racial steering are not permitted to seek judicial redress, this discriminatory practice may go unchallenged.

Finally, bona fide purchasers often fail to challenge discriminatory real estate practices because they are simply unaware of them. A black person who is shown listings in a particular neighborhood has no way of knowing which listings are being shown to white home-

seekers with comparable financial capabilities. Therefore, it is virtually impossible for the black homeseeker to detect the more subtle forms of racial discrimination. Current residents and municipal governments, on the other hand, are in a better position to organize and carry out investigations to determine whether such practices are in fact occurring in their communities.¹⁴ Again, to deny these victims of discrimination access to federal courts may enable real estate brokers to engage in unlawful discriminatory practices with impunity. This certainly is inconsistent with the underlying policy and remedial character of the Act.

IV. INDIVIDUAL RESPONDENTS AND RESPONDENT VILLAGE OF BELLWOOD HAVE STANDING TO SUE UNDER ARTICLE III OF THE CONSTITUTION

Petitioners argue that, whatever may be the correct interpretation of sections 3610 and 3612 of the federal Fair Housing Act, respondents are without standing to sue under Article III of the United States Constitution. Brief for Petitioner, at 39-50. Petitioners' position here is that even if Congress conferred standing on respondents to sue under section 3612, the respondents have failed to allege sufficient injury to warrant invocation of federal court jurisdiction under Article III. NCDH urges that Article III does not deprive the respondents of standing to sue since both the indi-

¹⁴ It is for this reason that the use of testers has been widely accepted as both an effective and necessary means of obtaining evidence of discrimination. *See Grant v. Smith*, 574 F.2d 252, 254 n.3 (5th Cir. 1978); *Johnson v. Jerry Pals Real Estate*, 485 F.2d 528 (5th Cir. 1973); *Zuch v. Hussey, supra*, 394 F. Supp. at 1051; *United States v. Youritan Construction Co., supra*, 370 F. Supp. at 647 n.3, 650. *Cf. Evers v. Dwyer*, 358 U.S. 202 (1958).

vidual respondents and the Village of Bellwood have clearly shown that they have "... such a personal stake in the outcome of the controversy' as to warrant ... invocation of federal court jurisdiction and ... exercise of the court's remedial powers on [their] behalf." *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975), quoting from *Baker v. Carr*, 369 U.S. 186, 204 (1962). Accordingly, *Amicus* NCDH submits that the Seventh Circuit's holding that respondents have standing to sue should be affirmed.

A. The Individual Respondents Have Standing To Sue As Residents Of Bellwood To Prevent Interference With Their Right To Live In A Stable, Integrated Community.

To satisfy the constitutional requirements of standing, a complainant must establish that he has suffered or will suffer some real and tangible injury, *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38-39 (1976); *United States v. Richardson*, 418 U.S. 166, 194 (1974); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973); *Sierra Club v. Morton*, 405 U.S. 727, 738 (1972); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152 (1969); and that the injury is sufficiently "traceable" to the putative conduct so that a favorable decision is likely to redress the wrong. *Simon v. Eastern Kentucky Welfare Rights Organization*, *supra*, 426 U.S. at 37-39; *Warth v. Seldin*, *supra*, 422 U.S. at 505; *Linda R.S. v. Richard D.*, *supra*, 410 U.S. at 619.¹⁵ With respect to the first requirement, this Court has stated:

¹⁵ As this Court has often noted,

... Congress may create a statutory right or entitlement the alleged deprivation of which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute. *Linda R.S. v. Richard D.*, 410 U.S. at 617, n.3, citing *Trafficante v. Metro-*

In *Sierra Club* ... we went on to stress the importance of demonstrating that the party seeking review be himself among the injured, for it is this requirement that gives a litigant a direct stake in the controversy and prevents the judicial process from becoming no more than a vehicle for the vindication of the value interests of concerned bystanders.

United States v. SCRAP, 412 U.S. 669, 687 (1973).

Petitioners contend that the respondents' interest in stopping racial steering, and in preventing the harmful consequences that flow from it, is too abstract and generalized to satisfy the injury-in-fact requirement of Article III. This contention, however, misconceives the nature of the harm caused by racial steering and the specific injury sustained by the individual respondents in this case.

Racial steering is no mere run-of-the-mill business practice. It amounts to a manipulation of the local housing market, to the social and economic detriment of all who live in the community. Through racial steering, real estate brokers, such as the petitioners in this case, interfere with the natural development of the community's residential patterns. As discussed in Part

politan Life Ins. Co., *supra*, 409 U.S. at 212 (White, J., concurring).

Warth v. Seldin, *supra*, 422 U.S. at 514. In such cases, this Court has imposed an additional, nonconstitutional requirement that the interest of the plaintiff at least be "arguably within the zone of interests ... protected or regulated" by the statute. *Simon v. Eastern Kentucky Welfare Rights Organization*, *supra*, 426 U.S. at 39 n.19, quoting from *Association of Data Processing Service Organizations, Inc. v. Camp*, *supra*, 397 U.S. at 153. In light of the discussion in Parts II and III, *supra*, it seems clear that the respondents here have met this threshold requirement. See *Trafficante*, *supra*.

II, *supra*, this practice inevitably leads to continued residential segregation; resegregation of previously integrated neighborhoods; instability in the housing market due to rapid racial change; potential problems arising from increased segregation in the schools; possible cut-backs in municipal services due to erosion of the tax base; and loss of the benefits of interracial associations. In short, the practice of racial steering causes disruption and dislocation in the community in which it occurs.

The Village of Bellwood is one such community. Lying on the outskirts of Chicago, it is particularly vulnerable to the disruptive effects of racial steering. All but one of the individual respondents are residents of that town. As a result, their interest in stopping racial steering in Bellwood is far more direct and tangible than the abstract concern of an arm-chair observer who is interested in promoting racial equality in housing for the benefit of the public at large.

In this respect, the instant case is distinguishable from those cases in which the plaintiff alleged an injury that was no different from that suffered by any other member of society. *See, e.g., Warth v. Seldin, supra*, 422 U.S. at 499; *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 220 (1974); *United States v. Richardson, supra*, 418 U.S. at 176-79; *Sierra Club v. Morton, supra*, 405 U.S. at 739. To the contrary, the claim of injury here is comparable to that alleged in *Shannon v. United States Department of Housing and Urban Development*, 436 F.2d 809 (3d Cir. 1970). In *Shannon*, the court held that the plaintiffs had satisfied the injury-in-fact test by alleging that "the concentration of lower-income black residents in a 221(d)(3) rent supplement project in

their neighborhood will obviously affect not only their investments in homes and businesses, but even the very quality of their daily lives." 436 F.2d at 818.

In addition, the interest which the individual respondents seek to have vindicated is almost identical to that involved in *Trafficante, supra*. In *Trafficante*, this Court ruled that the tenants of an apartment complex had standing to challenge their landlord's discriminatory treatment of nonwhite rental applicants. In so holding this Court found that the alleged loss of the social and economic "benefits of living in an integrated community" was sufficient to confer standing on the plaintiffs. The Court noted that:

The language of the Act is broad and inclusive. Individual injury or injury in fact to petitioners, the ingredient found missing in *Sierra Club v. Morton*, 405 U.S. 727, is alleged here. What the proof may be is one thing; the alleged injury to existing tenants by exclusion of minority persons from the apartment complex is the loss of important benefits from interracial associations.

409 U.S. at 209-210. *See also id.* at 212 (White, J., concurring); *Warth v. Seldin, supra*, 422 U.S. at 512-13. This interest in living in an integrated community has provided the basis for standing in other cases as well. *See, e.g., Fair Housing Council v. Eastern Bergen County Multiple Listing Service, Inc., supra*, 422 F. Supp. at 1080-81; *Village of Forest Park v. Fairfax Realty, supra*, P.H.E.O.H. Rptr. ¶ 13,699 at 14,467 and P.H.E.O.H. Rptr. ¶ 13,784 at 14,905; *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co., supra*, 429 F. Supp. at 489.

Petitioners attempt to distinguish *Trafficante* on grounds enunciated by the Ninth Circuit in *TOPIC*,

supra. While the court in *TOPIC* never reached the constitutional issue, since it decided the case on statutory grounds (*see Part III, supra*), it nonetheless suggested that this Court's ruling in *Trafficante* might not apply in a case such as this because "the plaintiffs here are not residents of a single apartment complex, but rather of a section of metropolitan Los Angeles with a population exceeding 100,000." *TOPIC, supra*, 532 F.2d at 1275. But this Court already has made clear that

... standing is not to be denied simply because many people suffer the same injury. . . . To deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious . . . actions could be questioned by nobody.

United States v. SCRAP, supra, 412 U.S. at 687, 688. The fact that all residents of Bellwood are denied rights guaranteed by the federal Fair Housing Act when realtors engage in the practice of racial steering does not reduce, let alone eliminate, the injury incurred by each resident as a result of this practice. In addition, many towns have fewer residents than the apartment complex in *Trafficante* which housed over 8200 people. The population of Bellwood, for example, is only about three times that number. *See Cornelius v. City of Parma, supra*, 374 F.Supp. at 741. Finally, as a practical matter, the adverse impact of racial separation or resegregation which stems from racial steering is, if anything, more severe in the context of a neighborhood or community than it is for a single apartment complex. As the court in *Fair Housing Council v. Eastern Bergen County Multiple Listing Service, Inc.*, said:

The alleged discriminatory housing practices and the effects of those practices would, if true, cause greater injury to the residents of Bergen County than the harm alluded to by the residents of the *Trafficante* housing complex. The fact that the alleged injury affects a large number of people in a large geographic area does not serve to attenuate it. On the contrary, it makes the harm more severe. Residents of an all white housing complex may need only to look to the next residential facility for the interracial associations they desire. If the allegations here are true, residents of Bergen County may have to go to an entirely different neighborhood or community. Similarly, a completely white building is less of a "ghetto" than a completely white neighborhood or community. That the *cordon sanitaire* has been drawn around an entire community rather than a single apartment complex does not render it lawful. This Court therefore holds that the residents of predominantly white neighborhoods have alleged injury in fact sufficient to confer standing to sue for violation of the Fair Housing Act, and respectfully declines to follow the contrary result suggested in *TOPIC* on appeal. The foregoing analysis applies equally with respect to residents of predominantly black neighborhoods or communities. These plaintiffs also have alleged the requisite injury in fact.

422 F. Supp. at 1081. In light of the similarity of the injury alleged in the instant case, it is clear that the individual respondents have asserted a sufficiently "direct and perceptible" harm to satisfy the standing requirements of Article III. *United States v. SCRAP, supra*, 412 U.S. at 688.

To establish standing, a plaintiff also must show that the injury is "fairly traceable" to the putative conduct, and that the action is likely to redress or prevent

the alleged wrong. Part II, *supra*, demonstrates the causal relationship between racial steering and the injuries sustained by the respondents. *See, e.g., United States v. Real Estate One, Inc., supra*, 433 F. Supp. at 1149-53. Thus, this case clearly differs from cases in which the causal connection between the challenged conduct and the plaintiff's injury was so attenuated that it was doubtful whether exercise of the court's jurisdiction would redress the alleged injury. *See, e.g., Simon v. Eastern Kentucky Welfare Rights Organization, supra*, 426 U.S. at 38, 44-46; *Warth v. Seldin, supra*, 422 U.S. at 507; *Linda R.S. v. Richard D., supra*, 410 U.S. at 618.

In the instant case, the respondents seek to prevent petitioners from manipulating the housing market and artificially altering the racial composition of their neighborhoods through the practice of racial steering. If respondents prevail in this litigation, there is no question that they will succeed in preventing racial steering by the petitioners and thereby avoid the ill effects of that practice.¹⁶ Several courts already have shown that effective judicial remedies can be formulated to provide adequate relief in racial steering cases. *See Zuch v. Hussey, supra*, 394 F. Supp. 1028; *United States v. Real Estate One, Inc., supra*, 433 F. Supp. 1140; *United States v. Long, supra*, P.H.E.O.H. Rptr. ¶ 13,631; *cf. Wheatley Heights Neighborhood Coalition v. Jenna Resales Co., supra*, 429 F. Supp. at 489. Unlike cases such as *Simon*, *Warth* and *Linda R.S.*, prevention of the injurious conduct in the instant case

¹⁶ Indeed, this Court recently held that redress does not have to be a certainty in order to meet the requirements of standing under Article III. *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 261 (1977).

does not depend on the actions of individuals not before the court, since the real estate agents charged with racial steering are all parties to this suit. Accordingly, NCDH submits that the individual respondents have satisfied the minimal requirements of standing under Article III.

B. The Village Of Bellwood Has Standing To Sue To Protect Its Interests Under The Fair Housing Act.

The complainants in this case alleged that the petitioners steered potential white homeseekers away from Bellwood and toward predominantly white neighboring communities and that they also engaged in racial steering within Bellwood itself. The Village of Bellwood therefore joined as a plaintiff in the lawsuit, alleging that it had been "injured by having [its] housing market . . . wrongfully and illegally manipulated to the economic and social detriment of [its] citizens." The court below found that Bellwood had shown a sufficiently real stake in the outcome of the controversy to allow it to pursue the action as an independent entity. The court summarized its holding as follows:

We need not determine, however, whether or not the Village of Bellwood would have standing if the sole injury alleged was the deprivation to its citizens of the benefits of integrated living. Taking the complaints' allegations as true, and construing them liberally in a light favorable to the Village, *Warth, supra*, 422 U.S. at 501, it is apparent that specific concrete injury with a substantial nexus to the Village's status as a unit of government could be proved under these complaints. *See Flast v. Cohen*, 392 U.S. 83, 102 (1968). An area targeted as a "changing neighborhood" to which minority homeseekers may be steered could experience unnaturally rapid population turnover, with

destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them.

569 F. 2d at 1017. *Amicus* NCDH submits that this determination is manifestly correct and should be affirmed.

Part II, *supra*, establishes that Bellwood, as a governmental body, has sustained and will continue to sustain real and tangible harm as a result of the petitioners' racial steering. Those injuries include the adverse impact which petitioners' practices have on the town's tax base, on its residential patterns, on racial segregation in the schools, and on the preservation of its suburban character. *Cf. Linmark Associates, Inc. v. Township of Willingboro, supra*, 431 U.S. at 94-95; *Village of Belle Terre v. Boraas, supra*. Additionally, the Village itself is a landowner and, as such, it has property interests similar to those of individual homeowners residing in the community. *See* Part III-A, *supra*. *See also In re Multidistrict Vehicle Air Pollution M.D.L. No. 31 v. Automobile Manufacturers Association, Inc.*, 481 F.2d 122, 131 (9th Cir.), *cert. denied*, 414 U.S. 1045 (1973).

In this respect, the instant case differs substantially from those cases in which the "organization's abstract concern with a subject" was deemed to be an inadequate "substitute for the concrete injury required by Art. III." *Simon v. Eastern Kentucky Welfare Rights Organization, supra*, 426 U.S. at 40. *See also Sierra Club v. Morton, supra*; *Warth v. Seldin, supra*. The injuries alleged by the Village as a plaintiff in its own right clearly constitute the "specific and perceptible

harm" required to confer standing under Article III. *See, e.g., Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 262-63 (1977); *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977).

Finally, the petitioners argue that the Village lacks standing because it is not a "person" as defined by section 3602(d) of the Act. But, as the court below pointed out, that section does not limit "person" to natural persons but includes "corporations." *Amicus* NCDH agrees with the Seventh Circuit that there is "no reason . . . to construe section 3602(d) to exclude" municipal corporations such as Bellwood. 569 F.2d at 1020.

CONCLUSION

For the foregoing reasons, NCDH respectfully urges this Court to affirm the judgment of the Court of Appeals.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1493

GLADSTONE REALTORS,
et al.,

Petitioners,

v.

VILLAGE OF BELLWOOD,
et al.,

Respondents.

ROBERT A. HINTZE, REALTORS,
et al.,

Petitioners,

v.

VILLAGE OF BELLWOOD,
et al.,

Respondents.

**AMICUS CURIAE BRIEF OF THE
NATIONAL LEAGUE OF CITIES
AND THE
UNITED STATES CONFERENCE OF MAYORS
IN SUPPORT OF RESPONDENTS**

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ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS
SEVENTH CIRCUIT

AMICUS CURIAE BRIEF OF THE
NATIONAL LEAGUE OF CITIES
AND THE
UNITED STATES CONFERENCE OF MAYORS
IN SUPPORT OF RESPONDENTS

Pursuant to Rule 42 of the Rules of this Court, and with the consent of all parties, witness whereof has been made to this Court, the National League of Cities and the United States Conference of Mayors file the annexed brief *amicus curiae*, in support of respondents.

1. INTEREST OF THE NATIONAL LEAGUE OF CITIES AND THE UNITED STATES CONFERENCE OF MAYORS

The decision in this case will determine whether municipalities throughout the country will be able to use Federal Fair Housing and Civil Rights legislation in their fight against racial discrimination. If these Federal remedies are denied municipalities, they will be powerless to act in this field in the absence of State enabling legislation and, in any event, will be powerless to act against discriminatory activities directed within the municipality but originated beyond their boundaries, except in those rare instances where the municipality is specifically authorized by State legislation to act beyond its boundaries.

2. IDENTITY OF THE NATIONAL LEAGUE OF CITIES

The National League of Cities was founded in 1924 by reform minded State Municipal Leagues and constitutes a national organization representing municipal interests before governmental bodies and before this Court. (See *National League of Cities v. Usery*, 426 U. S. 833 (1976)).

3. IDENTITY OF THE UNITED STATES CONFERENCE OF MAYORS

The United States Conference of Mayors is an organization of city governments represented through their chief elected official, the Mayor. It was organized in 1933 to promote the causes of the city, to foster responsible and effective relationships between city halls and the federal government, and to insure that local governments be responsive to the needs of their citizens and versed in municipal administration. The Conference of Mayors is a national forum through which larger cities

express their concerns and work to meet the needs of urban America. The United States Conference of Mayors is a not-for-profit membership corporation organized under the laws of the State of Illinois, and section 501 (c) (3) of the Internal Revenue Code, 26 U.S.C. 501 (c) (3).

4. PURPOSE OF THIS AMICUS BRIEF

The purpose of this Brief is to deal solely with that aspect of this litigation having to do with the standing of municipalities as Plaintiffs to enforce Sections 1982 and 3612 of Chapter 42 of the United States Code.

ARGUMENT

THE VILLAGE OF BELLWOOD HAS STANDING UNDER SECTIONS 1982, 3604 AND 3612 OF TITLE 42 OF THE UNITED STATES CODE TO BRING THIS ACTION

A. The Village of Bellwood is a party aggrieved by the racial steering of the Defendants.

In addition to the arguments on this point of the Respondent, Village of Bellwood, the following comments are made:

The entire community is involved as a victim when racial steering occurs as indicated in the decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U. S. 205 (1972) where it is stated as follows:

The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is as Senator Javits said in supporting the Bill 'the whole community,' 114 Congressional Record, 2706, and as Senator Mondale, who drafted Section 810a, said, the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living patterns.' (page 211)

Thus, it is not individuals alone who are damaged by the practices of racial steering, it is "the whole community".

This is not a case of the Village seeking to enforce the rights of others—it is a case of the community as a whole in its own right seeking to enforce its policy of fair housing. Blockbusting and racial steering are not primarily offenses against the individual. They are practices that destroy integrated housing and create segregated blight as indicated in *United States v. Bob Lawrence Realty, Inc.*, 474 F. 2nd 115, (5th Cir.),

cert. denied, 414 U. S. 826 (1973), the first Circuit Court of Appeals case dealing with this aspect of the Federal Fair Housing Act where the Court stated as follows:

The anti-blockbusting statute, §3604(e), is an attempt by Congress to disprove the belief, held by many, that the Thirteenth Amendment made a promise the Nation cannot keep. Integrated housing is deemed by many to be an a priori requirement before our schools can be realistically integrated. . . . (It is indisputable that white flight is a blight upon the democratized society we envision and this Congressional Act is in the mainstream of that vision. (page 127)

The "blight" to which the Court refers is a community problem.

Apart from the community's desire to enforce fair housing, it has in fact a duty to do so, as indicated in the Circuit Court of Appeals decision in *Gautreaux v. City of Chicago*, 480 F. 2d 210 (7th Cir.) (1973), in the concurring opinion of Chief Justice Swygert:

It is today well established that the failure of a municipality to alleviate racial imbalance in housing may be as grievous a violation of the equal protection clause as is direct action by a public body to advance discrimination among the races. (page 216)

B. Congress did not intend to exclude municipalities as Plaintiffs under Sections 1982 and 3612 of Chapter 42 of the United States Code.

In the Petitioners' Brief, the following statement is made at page 18:

Congress obviously intended to limit the applicability of Section 3612 to suits by 'private persons' because municipal corporations have traditionally been responsible for housing matters and, as instrumental-

ities of the state, they have alternative means for achieving fair housing objectives. See McQuillin, *supra*, §1.74. In Illinois, the legislature has delegated broad powers to its political subdivisions to prohibit discrimination in housing. See Ill. Rev. Stats. ch. 24, §11-11.1-1 (1977); *id.*, ch. 111, §5742 (1977).

From this statement, the realtors argue that Congress in adopting the Federal Fair Housing Act contemplated that municipalities would pursue their remedies under local ordinances, so there was no need to provide any remedy to municipalities under the Federal Act. In support of this proposition, the Fair Housing enabling legislation in Illinois is cited (Ill. Rev. Stats. Ch. 24, §11-11.1-1). This enabling legislation, however, was not in existence when the Federal Fair Housing Act was passed, nor was there any State statute in Illinois covering fair housing. In the absence of that enabling legislation, the City of Chicago Fair Housing Ordinance was held unconstitutional, *Two Hundred Nine Lake Shore Building Corporation v. City of Chicago*, 3 Ill. App. 3d 46 (1972). Thus, contrary to the realtor's position, the only remedy in 1968 available to an Illinois municipality to enforce a fair housing policy in Illinois was the Federal Fair Housing law.

Even the right to license and regulate realtors has been denied to Illinois Cities and Villages under local law. *Andruss v. City of Evanston*, 68 Ill. 2d 215 (1977).

As further insight into the availability of local remedies at the time of the passage of the Federal Fair Housing Act, we would refer to the then famous Proposition 14 where California adopted the following amendment to its State Constitution:

Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or

desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.

Fortunately, this constitutional amendment was held unconstitutional by this Court in *Reitman v. Mulkey*, 387 U. S. 369 (1966). With this type of local atmosphere prevailing in so called liberal states, it is hardly likely that Congress was placing heavy reliance on the ability of municipalities to rely on State enabling fair housing legislation at that time. This Court moreover recognized the economic pressures working against an integrated society as indicated in the concurring opinion of Justice Douglas in the *Reitman* decision as follows:

Property owners' prejudices are reflected, magnified, and sometimes even induced by real estate brokers, through whom most housing changes hands. Organized brokers have, with few exceptions, followed the principle that only a 'homogeneous' neighborhood assures economic soundness. Their views in some cases are so vigorously expressed as to discourage property owners who would otherwise be concerned only with the color of a purchaser's money, and not with that of his skin. (page 382)

In addition to the required State enabling legislation, the Federal law is the only remedy available to municipalities to combat steering and blockbusting practices that emanate outside their boundaries, a most frequent occurrence in highly developed urban areas.

The realtors further argue that a municipality is not a proper Plaintiff under Section 1982. *Monroe v. Pape*, 365 U. S. 167 (1961) is cited on page 27 of their Brief in support of this position. The principal holding of *Monroe v. Pape* was that a municipality was immune from suit under Section 1983 of Chapter 42. In *Monell v. Dept. of Soc. Serv. of City of N. Y.*,

98 S.Ct. 2018 (1978), this Court has now reversed that provision of the holding of *Monroe v. Pape*. Although *Monell* considers whether a municipality is a "person" subject to suit under Section 1983 of Chapter 42 which was passed in 1870, the decision is relevant in considering Section 1982 passed in 1866 because it deals with the question of the applicability of Federal Civil Rights legislation to municipalities and construes the intent of Congress during that same critical period of our history. The following statements of this Court in *Monell*, therefore, shed some light on the applicability of 1982 to municipalities as a party Plaintiff:

Because §1 (1983) of the Civil Rights Act does not state expressly that municipal corporations come within its ambit, it is finally necessary to interpret §1 to confirm that such corporations were indeed intended to be included within the 'persons' to whom that section applies. (page 2025)

This Court quotes from the Congressional debates statements showing the inter-relationship of the 1866 and 1870 Acts:

Where a power is remedial in its nature there is much reason to contend that it ought to be construed liberally, and it is generally adopted in the interpretation of laws.—1 Story on Constitution, sec. 429. Globe App., at 68.

The sentiments expressed in Representative Shellabarger's opening speech were echoed by Senator Edmunds, the manager of H. R. 320 in the Senate:

'The first section is one that I believe nobody objects to, as defining the rights secured by the Constitution of the United States when they are assailed by any State law or under color of any State law, and it is merely carrying out the principles of the civil rights bill (of 1866), which have since become a part of the Constitution. Globe, at 568.' (page 2033)

On page 2034, this Court deals directly with the question of whether municipal corporations were treated as natural persons during the period of passage of Sections 1982 and 1983:

In addition, by 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis. This had not always been so. When this Court first considered the question of the status of corporations, Chief Justice Marshall, writing for the Court, denied that corporations 'as such' were persons as that term was used in Art. III and the Judiciary Act of 1789. See *Bank of the United States v. Deveaux*, 5 Cranch 61, 86 (1809). By 1844, however, the *Deveaux* doctrine was unhesitatingly abandoned:

'(A) corporation created by and doing business in a particular state, is to be deemed to all intents and purposes as a person, although an artificial person, . . . capable of being treated as a citizen of that state, as much as a natural person.' *Louisville R. Co. v. Letson*. 2 How. 497, 558 (1844) (emphasis added), discussed in *Globe*, at 752.

And only two years before the debates on the Civil Rights Act, in *Cowles v. Mercer County*, 7 Wall. 118, 121 (1869), the Letson principle was automatically and without discussion extended to municipal corporations. Under this doctrine, municipal corporations were routinely sued in the federal courts and this fact was well known to Members of Congress. (page 2034)

Therefore, in construing Section 1983, this Court has determined that there was no Congressional intent to except municipalities from liability. Under what theory can it be argued that Congress intended to exclude municipalities from the right to enforce 1982 and 3612 when it can be shown the municipality has been damaged as a community by Civil Rights violations?

CONCLUSION

If the Defendants are successful in their program of racial steering, the net effect can only be that a community attempting to enforce fair housing legislation will ultimately become reseggregated. In the final analysis, the municipality is the principal victim and, therefore, is the principal party in interest in defending against racial steering. It is inconceivable that it is our national policy that Congress intended that such a municipality would not have available the Federal statutory remedies of 3612 and 1982 to combat these practices.

Respectfully submitted,

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